

MAR 1 1984

ALEXANDER L. STEVAS.  
CLERK

No. 83-747

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
*Petitioner,*  
v.

PAUL D. JOHNSON, *et al.*,  
*Respondents.*

On Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

E. BARRETT PRETTYMAN, JR.\*  
VINCENT H. COHEN  
WALTER A. SMITH, JR.  
ROBERT B. CAVE  
SUSAN M. HOFFMAN  
PAUL J. LARKIN, JR.  
HOGAN & HARTSON  
815 Connecticut Ave., N.W.  
Washington, D.C. 20006

ARTHUR LARSON  
Duke University School of Law  
Durham, North Carolina 27706  
*Counsel for Petitioner*

WILLIAM F. MULRONEY\*  
PETER J. VANGSNES  
JAMES M. HANNY  
MICHELLE A. PARFITT  
ASHCRAFT & GEREL  
2000 L Street, N.W.  
Washington, D.C. 20036  
*Counsel for Respondents*

\* *Counsel of Record*

Dated: March 1, 1984

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1983  
CERTIORARI GRANTED JANUARY 16, 1984

IN THE  
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**JOINT APPENDIX**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**C.A. No. 81-0963**

**JOHNSON**

**v.**

**BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., et al.,**

DATE	NR.	PROCEEDINGS
1981		
Apr. 22	1	COMPLAINT; jury demand; appearance.
May 21	2	ANSWERS of defendants Bechtel Associates Professional Corporation, D.C. and Bechtel Civil and Minerals, Inc. to the complaint.
1982		
May 13	51	MOTION by plaintiff for leave to file an amended complaint adding an additional party defendant and amending allegations of Count II; Exhibit A.
May 19	53	ORDER filed 5-18-82 granting motion of plaintiff for leave to file an amended complaint. (N)
May 19	54	AMENDED COMPLAINT by plaintiff.
May 20	56	ANSWER of defendant WMATA to the amended complaint.
June 21	62	MOTION by defendant WMATA for summary judgment; Exhibits A; Attachments A&B; Exhibit B.
July 09	74	OPPOSITION by plaintiff to defendant WMATA's motion for summary judgment.
July 26	83	REPLY by defendant WMATA in support of its motion for summary judgment; Exhibit C.

DATE	NR.	PROCEEDINGS
Aug. 25	89	MEMORANDUM and ORDER filed 8-24-82 granting motion of the defendant WMATA for summary judgment, and this action is dismissed as to WMATA. (N) CORCORAN, J.
Aug. 31	90	NOTICE OF APPEAL by plaintiff from order of 8-24-82.
Aug. 31		COPIES of Notice of Appeal and docket entries transmitted to USCA. USCA No. 82-2017.
Sept. 14	91	MOTION by plaintiff to supplement the record, attachment.
Oct. 01	95	ORDER filed 9-30-82 granting plaintiff's motion for leave to supplement the record on appeal and directing Clerk to transmit a copy of the Specifications of the Coordinated Insurance Program of the WMATA (Nov. 1973 edition) to the USDC., Exhibit. (N) CORCORAN, J.
Oct. 27	99	MOTION by plaintiff for relief under Rule 60(b) (3) from the judgment of this Court in favor of defendant WMATA; Exhibits 1-7.
Nov. 09	101	OPPOSITION by defendant WMATA to the plaintiff's Rule 60(b) (3) motion for relief; Exhibits A, B and C.
Nov. 23	103	ORDER filed 11-22-82 denying plaintiff's motion for relief from judgment; plaintiff shall pay reasonable costs including attorneys' fees incurred by defendant in opposing this motion. Defendant shall submit an affidavit of costs within 10 days. (N) CORCORAN, J.
Nov. 29	107	COPY OF ORDER from USCA dated 11-9-82 holding case No. 82-2017 and consolidated cases in abeyance, and further briefing deferred pending the ruling of the District Court on appellants' motion for relief under Rule 60 (b) (3).

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-2017

JOHNSON, *et al.*

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*

DATE	PROCEEDINGS
1982	
Sept. 01	Copy of notice of appeal and docket entries from Clerk, District Court (n-3).
Sept. 01	Docketing fee was paid in the District Court on 08-31-82.
Oct. 05	Certified Original Record (1 vol.) containing remaining papers (also the record in 82-1899) (n-3).
Oct. 19	Clerk's order, sua sponte, that the above cases 82-1740, et al., 82-2017, 82-2062, 82-2063 and 82-2148 are consolidated.
Nov. 09	Clerk's order that case No. 82-2017 and consolidated cases are held in abeyance and further briefing deferred pending the ruling of the District Court on appellants' Motion for Relief under Rule 60(b) (3); and that within ten (10) days of the entry of the District Court's order in said motion, appellants submit an appropriate motion to this Court either requesting a remand or proposing a new briefing schedule; and that if District Court has not ruled on said motion within thirty (30) days of the date of this order, appellants submit a status report to this Court.



DATE	PROCEEDINGS
1983	
Jan. 04	Appellants' motion for further consolidation of Nos. 82-2525, 83-1003, 82-2459, 82-2384, 82-2250, 82-2258, 82-2529, 82-2530, 82-2531 and proposal of a briefing schedule (m-4).
Jan. 07	Per Curiam order that the above case Nos. 82-2374, 82-2458, 82-2459, 82-2525, 82-2529, 82-2530, 82-2531, 83-1003 are consolidated with Nos. 82-2017 and consolidated cases; (2) these cases, Nos. 82-2017 and consolidated cases are expedited and shall be scheduled for oral argument during the March 1983 sitting period of the Court. The following briefing schedule is established; Appellee Bechtel's Brief—01/14/83; Appellants' Reply to Bechtel's Brief 01/24/83; Appellants' Brief on WMATA issues—01/25/83; Appellee WMATA's Brief 02/25/83; Appellants' Reply to WMATA's Brief—03/07/83; (3) All future filings in these consolidated appeals shall refer to No. 82-2017, Paul D. Johnson v. Bechtel Associates Professional Corporation, D.C., et al., and consolidated cases, which has been established as the lead docket; and (4) Nos. 82-2250 and 82-2384 shall not be consolidated with No. 82-2017 and consolidated cases at this time due to pending orders to show cause why the notices of appeals should not be dismissed; Tamm (who did not participate), Wald and Scalia, CJs.
Jan. 14	15-Appellees' (Bechtel) brief (p-14).
Jan. 14	7-Appellees' (Bechtel) record excerpts (p-14).
Jan. 24	15-Appellants' reply brief (m-24).
Jan. 25	15-Appellants' brief (m-25).
Jan. 25	10-Appellants' record excerpts (m-25).
Feb. 25	25-Appellee's (WMATA) brief (p-25).
Feb. 25	25-Appellee's (WMATA) record excerpts (p-25).

DATE	PROCEEDINGS
March 07	15-Appellants' reply brief (m-7).
March 16	15-Appellee's (WMATA) supplemental brief (m-16).
March 22	4-Joint Motion of Certain Metro Subway Construction Contractor/Employers for leave to file a joint brief as amici curiae (p. 22).
March 24	4-Appellee's (WMATA) opposition to the joint motion for leave to file a joint brief as amici curiae (p. 24).
March 28	ARGUED before CJ Robinson: and Wright, CJ. At the outset, the Court announced the Circuit Judge MacKinnon is a member of this panel, but is unable to be present. He will participate in the decision on the record, briefs and tape recording.
June 20	Per curiam order that the joint motion of certain Metro Subway Construction Contractor/Employers for leave to file joint brief as amici curiae is granted and the Clerk is directed to file the lodged brief amici curiae; and sua sponte, that leave is granted to the other parties to respond to the brief amici curiae within 15 days of the date of this order, if they so choose; CJ Robinson, Wright, CJ and SCJ Mackinnon.
June 20	15-Joint amici curiae (p-22)—certain Metro Subway Construction Contractor/Employers.
June 28	4-Transcript of oral argument.
July 05	15-Appellee's (WMATA) second supplemental brief (m-5).
July 05	15-Appellee's (WMATA) reply brief to joint amici curiae's brief (m-5).
August 19	Opinion for the Court filed by Senior Circuit Judge MacKinnon.
August 19	Mandate order.



DATE	PROCEEDINGS
Sept. 02	15-Appellee's (WMATA) petition for rehearing and suggestion for rehearing en banc (m-2).
Oct. 03	Per curiam order that appellee Washington Metropolitan Area Transit Authority's petition for rehearing, filed 09/02/83, is denied; CJ Robinson, Wright, CJ and SCJ MacKinnon.
Oct. 03	Per curiam order, en banc, that the suggestion for rehearing en banc of appellee WMATA is denied; CJ Robinson, Wright, Tamm, Wilkey, Wald, Mikva, Edwards, Ginsburg, Bork and Scalia, CJs and SCJ MacKinnon (Circuit Judge Wald did not participate in this order).
Nov. 15	Notice from Clerk, Supreme Court that petition for writ of certiorari was filed on 11-04-83 in SC No. 83-747.
Nov. 15	Certified certificate that petition for writ of certiorari was filed on 11/04/83 in SC No. 83-747.
1984	
Jan. 17	Clerk's order that the Clerk of the District Court recertify and retransmit to this Court the records on appeal for further transmission to the Supreme Court.
Jan. 18	Certified copy of order from Clerk, Supreme Court granting petition for writ of certiorari in SC No. 83-747 on 01-16-84.
Jan. 18	Letter dated 01-17-84 from Clerk, Supreme Court asking that record be certified and transmitted to Supreme Court.
Jan. 18	CERTIFIED ORIGINAL RECORD (3 vols.) 2 reporters transcripts—pursuant to 01-17-84 order.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 81-3057

BUCHANAN

v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*

DATE	NR.	PROCEEDINGS
1981		
Dec. 14	1	COMPLAINT; appearance.
Jan. 19	2	ANSWERS by defendants to complaint; jury demand.
1982		
May 13	19	MOTION by plaintiffs for leave to file an amended complaint adding an additional party defendant.
July 06	31	ORDER granting plaintiffs' motion for leave to file an amended complaint and defendants shall have 15 days from the date of this order within which to answer the amended complaint. (N) SMITH, J.
July 06	32	AMENDED COMPLAINT by plaintiffs.
Aug. 25	37	ANSWER of defendant WMATA to amended complaint.
Sept. 14	39	MOTION by WMATA for summary judgment; Exhibits A-L.
Oct. 07	45	OPPOSITION by plaintiffs to defendant WMATA's motion for summary judgment.
Oct. 14	46	REPLY by defendant WMATA in support of motion for summary judgment; Exhibits M&N.

DATE	NR.	PROCEEDINGS
Oct. 15	47	SUPPLEMENTAL OPPOSITION by plaintiffs to defendants' motion for summary judgment; Exhibits 4, 5, 6, and 7.
Nov. 15		MOTION of defendant for summary judgment heard, argued and taken under advisement with counsel to be notified. SMITH, J.
Nov. 19	53	ORDER granting WMATA's motion for summary judgment with no defendants remaining; action is dismissed. (N) SMITH, J.
Dec. 01	54	NOTICE OF APPEAL from Order entered Nov. 19, 1982.
Dec. 02		COPY OF NOTICE and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2459.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Buchanan v. Bechtel Associates Professional Corp.*, D.C., et al., U.S.C.A. No. 82-2459, see docket entries in *Johnson v. Bechtel Associates Professional Corp.*, D.C., et al., U.S.C.A. No. 82-2017 and consolidated cases reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 81-1481

CLANAGAN

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*

DATE	NR.	PROCEEDINGS
1981		
June 26	1	COMPLAINT; appearance; jury demand.
Aug. 04	2	ANSWER of defendants to complaint; jury demand.
1982		
June 11	79	MOTION by plaintiff for leave to file a second amended complaint deleting all Third Party defendants, adding WMATA an additional party defendant and amending allegations of Count II.
July 12	87	ORDER filed 7-8-82 granting plaintiff's motion for leave to amend complaint; directing that plaintiff's amended complaint is deemed filed nunc pro tunc as of July, 1982. (N) RICHEY, J.
July 12	87A	AMENDED COMPLAINT (second) by plaintiff; jury demand.
Aug. 02	91	ORDER filed 7/29/82 directing defendant WMATA to file a motion for summary judgment on grounds of immunity by virtue of the Workers' Compensation Statute by no later than 8/6/82; directing plaintiff to respond in ten (10) days thereafter to said motion; setting on argument merits on motion for 8/16/82 at 9:30 A.M. RICHEY, J.

DATE	NR.	PROCEEDINGS
Aug. 02	93	ANSWER by defendant WMATA to second amended complaint.
Aug. 12	96	MOTION by WMATA for summary judgment; Exhibits A-D.
Aug. 13	97	SUPPLEMENTAL OPPOSITION by plaintiff to defendant's motion for summary judgment on the issue of statutory immunity.
Aug. 16		ORAL MOTION of defendant WMATA for summary judgment on grounds of immunity by virtue of Worker's Compensation Statute heard and taken under advisement. RICHEY, J.
Aug. 20	104	REPLY of defendant WMATA to plaintiff's opposition to defendants' motion for summary judgment; Exhibits.
Sept. 03	109	MEMORANDUM OPINION filed 9-2-82. (N) RICHEY, J.
Sept. 03	110	ORDER filed 9-2-82 granting defendant's motion for summary judgment; dismissing action without prejudice to the bringing of an entirely new action by plaintiff against the subcontractor for whom he worked. (N) RICHEY, J.
Sept. 09	111	NOTICE of appeal by plaintiff from order of 9-2-82. COPIES of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2063.
Oct. 27	119	MOTION of plaintiff for relief under Rule 60 (b) (3) from the judgment of this court in favor of defendant WMATA; Exhibits 1-9.
Nov. 9	121	OPPOSITION by defendant WMATA to the plaintiff's Rule 60(b) (3) motion for relief; Exhibits A-D.

DATE	NR.	PROCEEDINGS
Nov. 16	122	REPLY by plaintiff to defendant's opposition to the plaintiff's Rule 60(b) (3) motion for relief; Exhibits 10-17.
Nov. 24	123	SUPPLEMENTAL EXHIBITS of WMATA in support of its opposition to the plaintiff's Rule 60(b) (3) motion for relief; Attachment.
Dec. 09	127	COPY of ORDER denying plaintiff's motion for relief pursuant to Rule 60(b) (3); directing plaintiff to pay reasonable costs, including attorneys' fees incurred by the defendant in opposing these motions. (N) (Signed 12/3/82). RICHEY, J.
Dec. 17	129	NOTICE OF APPEAL by plaintiff from decision and order of 12-9-82.
Dec. 28		COPIES of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2530.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Clanagan v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. Nos. 82-2525 and 82-2530, see relevant docket entries in *Johnson v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2017 and consolidated cases reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 81-1261

EIGHMEY

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*

DATE	NR.	PROCEEDINGS
1981		
June 02	1	COMPLAINT; jury demand.
Oct. 19	2	ANSWER of defendants to the complaint; jury demand.
May 27	32	MOTION by plaintiffs for leave to file an amended complaint adding an additional party defendant.
June 23	35	ORDER filed 6-21-82 granting motion of defendants Bechtel Associates Professional Corp., D.C. and Bechtel Civil and Minerals, Inc. for summary judgment; denying motion of plaintiffs for partial summary judgment; that plaintiffs' motion for leave to file an amended complaint to make WMATA a defendant is granted solely for purpose of establishing at a hearing to be held on 8-18-82 at 10:00 A.M. whether or not Workmen's Compensation laws bars recovery against WMATA; entering Judgment for defendants Bechtel Associates Professional Corp., D.C., Bechtel Civil and Minerals, Inc. and Third Party defendants McLean-Grove-Skanska Joint Venture and Slattery Associates and dismissing them from this action pursuant to Rule 56 and 54(b) of FRCP. (N) JUNE L. GREEN, J.



DATE	NR.	PROCEEDINGS
June 23	36	AMENDED COMPLAINT.
July 14	40	ANSWER of defendant WMATA to amended complaint; jury demand.
July 15		MOTION of defendant WMATA to dismiss heard in part and continued until 7-20-82 at 10:00 A.M. JUNE GREEN, J.
July 26		MOTION of defendant for summary judgment heard and granted. (OTBP) JUNE GREEN, J.
Aug. 9	43	MEMORANDUM OPINION filed 7-30-82. JUNE GREEN, J.
Aug. 5	45	MOTION by plaintiffs for reconsideration.
Aug. 31	49	OPPOSITION by defendant WMATA to motion for reconsideration; Exhibits A-C.
1982		
Sept. 14	52	SUPPLEMENTAL EXHIBIT by WMATA in support of opposition to motion for reconsideration.
Sept. 15	53	ORDER filed 9-13-82 denying motion of plaintiff for reconsideration. n/r (signed 9-10-82) (N) GREEN, J.
Sept. 23	55	NOTICE of appeal by plaintiffs from order of 9-13-82.
Sept. 23		COPIES of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2148.
Oct. 27	62	MOTION of plaintiffs for relief under Rule 60(b) (3) from the judgment of this Court in favor of defendant WMATA; Exhibits 1-9.
Nov. 09	65	OPPOSITION by defendant WMATA to the plaintiffs' Rule 60(b) (3) motion for relief; Exhibits A-D.



DATE	NR.	PROCEEDINGS
Nov. 16	66	REPLY by plaintiffs to defendant's opposition to the plaintiffs' Rule 60(b) (3) motion for relief; Exhibits 10-17.
Nov. 24	67	SUPPLEMENTAL EXHIBIT of WMATA in support of WMATA's opposition to the plaintiffs' Rule 60(b) (3) motion for relief; Attachment.
Nov. 30	69	COPY OF ORDER from USCA dated 11-9-82 that case 82-2017 and consolidated cases are held in abeyance and further briefing deferred pending ruling of the USDC on appellants' motion for relief under Rule 60(b) (3).
Dec. 01	70	RESPONSE of defendant WMATA to plaintiffs' reply in support of their Rule 60(b) (3) motion for relief; attachments.
Dec. 10	71	ORDER denying motion of plaintiffs for relief under Rule 60(b) (3) of the F.R.C.P. (N) JUNE GREEN, J.
Dec. 17	72	NOTICE of appeal by plaintiffs for decision and order entered 12/10/82.
Dec. 27		COPIES of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2531.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Eighmey v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2531, see relevant docket entries in *Johnson v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2017 reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 81-1125

WALKER

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*

DATE	NR.	PROCEEDINGS
1981		
May 14	1	COMPLAINT; appearance; jury demand.
1982		
May 19	196	MOTION of plaintiffs for leave to file an amended complaint adding an additional party defendant and amending allegations of Count II.
June 1	2	ANSWER of defendants to the complaint; jury demand.
July 08	203	ORDER granting plaintiffs' motion for leave to amend complaint; directing that plaintiffs' amended complaint is deemed filed, nunc pro tunc as of July, 1982. (N) RICHEY, J.
July 08	204	AMENDED COMPLAINT of plaintiffs for negligence; jury demand.
July 21		STATUS CALL: Court to issue show cause order directing WMATA to file summary judgment motion by 8-6-82; plaintiffs have 10 days to respond; further status call set for 7-11-82 and 8-16-82 at 9:30 a.m. RICHEY, J.
July 29	208	ORDER directing defendant WMATA to file a motion for summary judgment on grounds of immunity by virtue of the Workers' Compensation Statute by no later than 8-6-82;

DATE	NR.	PROCEEDINGS
		directing plaintiffs to respond to ten (10) days thereafter to said motion; setting hearing on merits on motion for 8-16-82 at 9:30 a.m. (N) RICHEY, J.
Aug. 02	211	ANSWER of defendant WMATA to amended complaint.
Aug. 13	213	SUPPLEMENTAL OPPOSITION of plaintiffs to defendants' motion for summary judgment on the issue of statutory immunity.
Aug. 13	214	MOTION of defendant WMATA for summary judgment; Exhibits A-D.
Aug. 16		ORAL MOTION of defendant WMATA for summary judgment on grounds of immunity by virtue of Workers' Compensation Statute heard and taken under advisement; parties to file responses on outstanding motions by 8-20-82 by 3:30 p.m. simultaneously. RICHEY, J.
Aug. 20	219	REPLY of WMATA in support of its motion for summary judgment; Exhibit D.
Sept. 02	228	ORDER granting defendant's motion for summary judgment; dismissing action without prejudice to the bringing of an entirely new action by plaintiffs against the subcontractor for whom he worked. (N) RICHEY, J.
Sept. 09	229	NOTICE of appeal by plaintiffs from Order entered 9-2-82.
Sept. 10		COPY of notice of appeal and docket entries transmitted to USCA. USCA No. 82-2062.
Oct. 27	235	MOTION of plaintiffs for relief under Rule 60(b) (3) from the judgment of this Court in favor of defendant WMATA; Exhibits 1-13.
Nov. 09	237	OPPOSITION of defendant WMATA to the plaintiffs' Rule 60(b) (3) motion for relief; Exhibits A, B, and C.

DATE	NR.	PROCEEDINGS
Nov. 16	238	REPLY of plaintiffs to defendant's opposition to the plaintiffs' Rule 60(b) (3) motion for relief; Exhibits 14-21.
Nov. 24	239	SUPPLEMENTAL EXHIBIT of defendant WMATA in support of WMATA's opposition to the plaintiffs' Rule 60(b) (3) motion for relief; Attachment.
Nov. 29	240	COPY OF ORDER from USCA filed 11-9-82 that case 82-2017 and consolidated cases are held in abeyance and further briefing deferred pending ruling of the USDC an appellants' motion for relief under Rule 60(b) (3).
Dec. 01	242	RESPONSE of defendant WMATA to plaintiffs' reply in support of their Rule 60(b) (3) motion for relief; Attachments (7). (filed in expandable folder).
Dec. 09	243	ORDER denying plaintiffs' motion for relief pursuant to Rule 60(b) (3); directing plaintiffs to pay reasonable costs including attorneys' fees, incurred by the defendant in opposing these motions. (signed 12-3-82) (N) RICHEY, J.
Dec. 17	245	NOTICE OF APPEAL of plaintiffs from order entered 12-9-82.
Dec. 28		COPIES of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 82-2529.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Walker v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. Nos. 82-2062 and 82-2529, see relevant docket entries in *Johnson v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2017 reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 82-0999

WILLIAMS

v.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

DATE		PROCEEDINGS
1982		
Apr. 09	1	COMPLAINT; appearance; jury demand.
Apr. 29	3	ANSWER by defendant Washington Metropolitan Transit Authority to complaint.
Aug. 05	10	MOTION of WMATA for summary judgment; Exhibits A, B, and C.
Aug. 16	11	ORDER directing that plaintiff shall file a response to motion of defendant for summary judgment; defendant shall file a reply to the plaintiff's response no later than 8/23/82, and setting oral argument on motion of defendant for summary judgment on 8/31/82 at 9:00 a.m. (N) FLANNERY, J.
Aug. 17	12	OPPOSITION of plaintiff to the defendant's motion for summary judgment; P&A's; Exhibits.
Aug. 23	13	REPLY of WMATA in support of its motion for summary judgment; Exhibits
Aug. 31		MOTION of defendant for summary judgment, argued and taken under advisement. (Rep: S. Popejoy) FLANNERY, J.
Oct. 07	25	MEMORANDUM filed 10-6-82. (N) FLANNERY, J.

DATE	PROCEEDINGS
Oct. 07	26 JUDGMENT filed 10-6-82 granting motion of defendant WMATA for summary judgment. (N) FLANNERY, J.
Oct. 07	27 MOTION of plaintiff for reconsideration of the court's Order dated 10-6-82 granting defendant's motion for summary judgment; P&A's.
Oct. 14	28 OPPOSITION of defendant to the plaintiff's motion for reconsideration; Exhibits.
Dec. 16	35 ORDER denying motion of plaintiff from Order entered 12/16/82.
Dec. 21	COPY of notice of appeal and docket entries transmitted to U.S.C.A. U.S.C.A. No. 83-1003.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Williams v. Washington Metropolitan Area Transit Authority*, U.S.C.A. No. 83-1003, see relevant docket entries in *Johnson v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2017 reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

C.A. No. 81-0114

WILMES

v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*

DATE	NR.	PROCEEDINGS
1981		
Jan.	1	COMPLAINT; jury demand; appearance.
Jan. 29	2	ANSWER of Bechtel Civil and Minerals, Inc. and Bechtel Associates Professional Corp., D.C. to the complaint.
1982		
May 19	57	MOTION of plaintiff Stanley Wilmes for leave to file a second amended complaint adding an additional party defendant and amending allegations of Count II.
July 13	63	ORDER granting motion of plaintiff for leave to file a second amended complaint, nunc pro tunc as of May, 1982. (N) FLANNERY, J.
July 16	64	SECOND AMENDED COMPLAINT adding WMATA as defendant.
Aug. 02	69	ANSWER of the defendant WMATA to second amended complaint.
Aug. 20	72	MOTION by defendant WMATA for summary judgment; Exhibits A-D.
Sept. 13	73	NOTICE by plaintiff to take deposition of Robert Thompson, Delmer Ison, James P. Layden and David Sewall.



DATE	NR.	PROCEEDINGS
Sept. 17	80	OPPOSITION by plaintiff to defendant WMATA's motion for summary judgment; Exhibit A.
Sept. 17	81	MOTION by plaintiff for leave of the court to file an amended complaint adding new party defendants.
Sept. 24	82	OPPOSITION by defendant to plaintiff's motion for leave to file an amended complaint.
Oct. 08	90	REPLY by defendant WMATA in support of its motion for summary judgment; Exhibits E-K.
Nov. 09		DEPOSITION by plaintiff of Robert R. Thompson taken on 11-3-82 (unexecuted); Exhibits 1 and 2.
Nov. 17		DEPOSITION of Delmer Ison taken on 11-3-82 on behalf of plaintiff; errata sheets; Exhibits.
Nov. 19	100	MEMORANDUM OF POINTS AND AUTHORITIES by plaintiff in support of the motion to amend the complaint, Exhibits 1-9.
Nov. 19	101	SUPPLEMENTAL OPPOSITION by defendant to plaintiff's motion for leave to file an amended complaint; Exhibit A.
Dec. 01	104	REPLY of defendant WMATA to plaintiff's second supplemental opposition to WMATA's motion for summary judgment; Attachments.
Dec. 09		DEPOSITION of David L. Sewall taken November 3, 1982 by plaintiff; signature waived.
Dec. 10		MOTION of defendant WMATA for summary judgment argued and granted; plaintiff's motion to amend complaint argued and denied. FLANNERY, J.
Dec. 20	106	MEMORANDUM filed 12-16-82. (N) FLANNERY, J.



DATE	NR.	PROCEEDINGS
Dec. 20	107	ORDER filed 12-16-82 granting motion of defendant for summary judgment; denying motion of plaintiff to amend his complaint; and dismissing plaintiff's action. (N) FLANNERY, J.
Dec. 20	108	NOTICE OF APPEAL by plaintiff from order of 12-16-82. COPIES of Notice of Appeal & docket entries transmitted to USCA. USCA No. 82-2525.*

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\* For relevant docket entries in the United States Court of Appeals for the District of Columbia Circuit in *Wilmes v. Bechtel Civil and Minerals, Inc., et al.*, U.S.C.A. No. 82-2525, see relevant docket entries in *Johnson v. Bechtel Associates Professional Corp., D.C., et al.*, U.S.C.A. No. 82-2017 reprinted at pp. 3-6 of the Joint Appendix.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-0963

Judge Corcoran

PAUL JOHNSON,

*Plaintiff,*

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*,

*Defendants.*

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit A to WMATA's Motion for  
Summary Judgment filed on June 21, 1982]

STATE OF VIRGINIA     )  
                                  ) ss:  
COUNTY OF FAIRFAX    )

I, DAVID L. SEWALL, being first duly sworn, depose and say that:

1) I am the Branch Claims Manager for the National Loss Control Service Corporation ("NATLSCO").

2) My duties as Branch Claims Manager provide me with personal knowledge of Mr. Paul Johnson's claim for worker's compensation based on injuries he allegedly sustained on or about April 22, 1978 while employed by Ball, Healy, Granite.

3) Mr. Johnson claimed to have suffered occupational loss of hearing and occupational pulmonary disease. At-

tached herewith as Attachment A is an April 22, 1978 medical report by Dr. David B. Simon concerning Mr. Johnson's alleged chronic bronchitis.

4) Liability of Ball, Healy, Granite for workers' compensation was insured by Lumbermen's Mutual Casualty Company pursuant to a compensation insurance program purchase by WMATA. The claim was administered by NATLSCO.

5) Mr. Johnson underwent nonsurgical medical treatment for his alleged injuries. All medical attention received by Mr. Johnson was paid for by the Lumbermen's Mutual Casualty Company. Mr. Johnson's compensation claim was settled for a lump sum payment of \$9,000. A copy of the Department of Labor compensation order approving the aforesaid settlement is attached hereto as Attachment B.

6) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 17th day of June, 1982 in the State of Virginia, City of Fairfax.

/s/ Lora D. Graves  
Notary Public

My Commission Expires: October 14, 1985.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

Civil Action No. 81-0963

Judge Corcoran

PAUL JOHNSON,

*Plaintiff,*

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*,

*Defendants.*

---

AFFIDAVIT OF DELMER ISON

[Attached as Exhibit B to WMATA's Motion for  
Summary Judgment filed on June 21, 1982]

DISTRICT OF     )  
                      ) ss:  
COLUMBIA         )

I, DELMER ISON, being first duly sworn, depose and say that:

1) I am the Secretary of the Washington Metropolitan Area Transit Authority ("WMATA") and its Acting Director of Claims.

2) My duties as Secretary and Acting Director of Claims provide me with personal knowledge of the workers' compensation program that applies to construction workers on the WMATA subway system.

3) WMATA, as the general contractor, has contracted with private construction companies, as private sub-contractors, to build the WMATA subway system.

4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA, as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

5) The plaintiff, Paul Johnson, was an employee of one of WMATA's private subcontractors, Ball, Healy, Granite, during the time of his alleged injury.

6) As an employee of a WMATA subcontractor, Mr. Johnson was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

8) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 17th day of June, 1982 in the District of Columbia.

/s/ Rose M. Remund  
Notary Public

My Commission Expires: Feb. 28, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 82-0999

GLENWOOD WILLIAMS,  
*Plaintiff,*  
v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
*Defendant.*

---

**AFFIDAVIT OF DELMER ISON**

[Attached as Exhibit A to WMATA's Motion for  
Summary Judgment filed on August 5, 1982]

DISTRICT OF )  
                  ) ss:  
COLUMBIA       )

I, DELMER ISON, being first duly sworn, depose and say that:

1) I am the Secretary of the Washington Metropolitan Area Transit Authority ("WMATA") and its Acting Director of Claims.

2) My duties as Secretary and Acting Director of Claims provide me with personal knowledge of the workers' compensation program that applies to construction workers on the WMATA subway system.

3) WMATA, as the general contractor, has contracted with private construction companies, as subcontractors, to build the WMATA subway system.

4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA,

as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

5) The plaintiff, Glenwood Williams, was an employee of WMATA's subcontractors during the time of his alleged injuries.

6) As an employee of WMATA subcontractors, Mr. Williams was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

8) The plaintiff has applied for and received compensation benefits for lung injuries allegedly resulting from his purported exposure to injurious substances while he was working on the WMATA subway system.

9) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 8th day of August, 1982 in the District of Columbia.

/s/ [Illegible]  
Notary Public

My Commission Expires: Jan. 14, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

Civil Action No. 82-0999

GLENWOOD WILLIAMS,

*Plaintiff,*

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
*Defendant.*

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit B to WMATA's Motion for  
Summary Judgment filed on August 5, 1982]

STATE OF VIRGINIA       )  
                                  ) ss:  
COUNTY OF FAIRFAX     )

I, DAVID L. SEWALL, being first duly sworn, depose  
and say that:

1) I am the Branch Claims Manager for the National  
Loss Control Service Corporation ("NATLSCO").

2) My duties as Branch Claims Manager provide me  
with personal knowledge of Mr. Glenwood Williams'  
claim for worker's compensation based on injuries he  
allegedly sustained while employed by subcontractors  
working on the Washington Metropolitan Area Transit  
Authority ("WMATA") subway system.

3) Mr. Williams claimed to have suffered lung in-  
juries because of his alleged exposure to injurious sub-  
stances while working on the construction of the WMATA  
subway system. Mr. Williams filed a claim for work-



men's compensation benefits on or about December 15, 1978.

4) WMATA purchased workmen's compensation insurance that applied to the plaintiff. The plaintiff worked for subcontractors who did not purchase such compensation insurance. The insurance was purchased from Lumbermen's Mutual Casualty Company and it was administered by NATLSCO.

5) Mr. Williams' compensation claim was settled for Ninety-Eight Thousand Dollars (\$98,000.00) plus future medicals. On August 28, 1981, the Department of Labor issued a final compensation order approving the aforesaid settlement of the plaintiff's compensation claim. A copy of the Department of Labor compensation order is attached hereto as Attachment A.

6) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 5th day of August, 1982 in the State of Virginia, City of Fairfax.

/s/ [Illegible]  
Notary Public

My Commission Expires: Sept. 8, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-1481

JOHN WARREN CLANAGAN,  
*Plaintiff,*

v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.,*  
*Defendants.*

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AFFIDAVIT OF DELMER ISON

[Attached as Exhibit D to WMATA's Motion for  
Summary Judgment filed on August 12, 1982]

DISTRICT OF )  
 ) ss:  
COLUMBIA )

I, DELMER ISON, being first duly sworn, depose and  
say that:

1) I am the Secretary of the Washington Metropolitan  
Area Transit Authority ("WMATA") and its Acting  
Director of Claims.

2) My duties as Secretary and Acting Director of  
Claims provide me with personal knowledge of the work-  
ers' compensation program that applies to construction  
workers on the WMATA subway system.

3) WMATA, as the general contractor, has contracted  
with private construction companies, as subcontractors,  
to build the WMATA subway system.

4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA, as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

5) The plaintiff, John Warren Clanagan, was an employee of WMATA's subcontractors during the time of his alleged injuries.

6) As an employee of WMATA subcontractors, Mr. Clanagan was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

8) The plaintiff has applied for and will receive compensation benefits for lung injuries allegedly resulting from his purported exposure to injurious substances while he was working on the WMATA subway system.

9) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 12th day of August, 1982 in the District of Columbia.

/s/ Lora D. Graves  
Notary Public, D.C.

My Commission Expires: Jan. 14, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

Civil Action No. 81-1481

JOHN WARREN CLANAGAN,  
*Plaintiff,*  
v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.,*  
*Defendants.*

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit C to WMATA's Motion for  
Summary Judgment filed on August 12, 1982]

STATE OF VIRGINIA     )  
                                  ) ss:  
COUNTY OF FAIRFAX    )

I, DAVID L. SEWALL, being first duly sworn, depose  
and say that:

1) I am the Branch Claims Manager for the National  
Loss Control Service Corporation ("NATLSCO").

2) My duties as Branch Claims Manager provide me  
with personal knowledge of Mr. John Warren Clanagan's  
claim for worker's compensation based on injuries he  
allegedly sustained while employed by subcontractors  
working on the Washington Metropolitan Area Transit  
Authority ("WMATA") subway system.

3) Mr. Clanagan claimed to have suffered lung injuries  
because of his alleged exposure to injurious substances  
while working on the construction of the WMATA sub-

way system. Mr. Clanagan filed a claim for workmen's compensation benefits on or about June 9, 1978.

4) WMATA purchased workmen's compensation insurance that applied to the plaintiff. The plaintiff worked for subcontractors who did not purchase such compensation insurance. The insurance was purchased from Lumbermen's Mutual Casualty Company and it was administered by NATLSCO.

5) Mr. Clanagan's compensation claim has been settled for Fifty-Five Thousand Four Hundred and Fifty Five Dollars (\$55,455.00). A copy of the joint petition to the Department of Labor seeking approval of the settlement is attached hereto as Attachment A.

6) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 12th day of August, 1982 in the State of Virginia, City of Fairfax.

/s/ [Illegible]  
Notary Public

My Commission Expires: October 14, 1985.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-1125

CALVIN WALKER, *et ux.*,  
*Plaintiffs,*  
v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*,  
*Defendants.*

---

AFFIDAVIT OF DELMER ISON

[Attached as Exhibit D to WMATA's Motion for  
Summary Judgment filed on August 13, 1982]

DISTRICT OF )  
                  ) ss:  
COLUMBIA       )

I, DELMER ISON, being first duly sworn, depose and  
say that:

(1) I am the Secretary of the Washington Metropolitan  
Area Transit Authority ("WMATA") and its Acting  
Director of Claims.

(2) My duties as Secretary and Acting Director of  
Claims provide me with personal knowledge of the work-  
ers' compensation program that applies to construction  
workers on the WMATA subway system.

(3) WMATA, as the general contractor, has contracted  
with private construction companies, as subcontractors,  
to build the WMATA subway system.

(4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA, as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

(5) The male plaintiff, Calvin Walker, was an employee of WMATA's subcontractors during the time of his alleged injuries.

(6) As an employee of WMATA subcontractors, Mr. Walker was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

(7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

(8) Mr. Walker has applied for and will receive compensation benefits for lung injuries allegedly resulting from his purported exposure to injurious substances while he was working on the WMATA subway system.

(9) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 13th day of August, 1982 in the District of Columbia.

/s/ Rose M. Remund  
Notary Public

My Commission Expires: Feb. 28, 1985



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-1125

CALVIN WALKER, *et ux.*,  
*Plaintiffs,*  
v.

BECHTEL ASSOCIATES PROFESSIONAL CORPORATION,  
D.C., *et al.*,  
*Defendants.*

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit C to WMATA's Motion for  
Summary Judgment filed on August 13, 1982]

DISTRICT OF )  
 ) ss:  
COLUMBIA )

I, DAVID L. SEWALL, being first duly sworn, depose  
and say that:

(1) I am the Branch Claims Manager for the National  
Loss Control Service Corporation ("NATLSCO").

(2) My duties as Branch Claims Manager provide me  
with personal knowledge of Mr. Calvin Walker's claim  
for workers' compensation based on injuries he allegedly  
sustained while employed by subcontractors working on  
the Washington Metropolitan Area Transit Authority  
("WMATA") subway system.

(3) Mr. Walker claimed to have suffered lung injuries  
because of his alleged exposure to injurious substances  
while working on the construction of the WMATA sub-

way system. Mr. Walker filed a claim for workmen's compensation benefits in or about August, 1980.

(4) WMATA purchased workmen's compensation insurance that applied to Mr. Walker. Mr. Walker worked for subcontractors who did not purchase such compensation insurance. The insurance was purchased from Lumbermen's Mutual Casualty Company and it was administered by NATLSCO.

(5) Mr. Walker's compensation claim has been settled for One Hundred and Twenty Thousand Dollars (\$120,000.00). A copy of the joint petition to the Department of Labor seeking such approval is attached hereto as Attachment A.

(6) The aforementioned joint petition indicates that since August 1980, Mr. Walker has been continuously represented by his present counsel, Ashcraft & Gerel, concerning his alleged lung injuries.

(7) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 13th day of August, 1982 in the District of Columbia.

/s/ Lora D. Graves  
Notary Public

My Commission Expires: Jan. 14, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-0114

STANLEY WILMES,

*Plaintiff,*

v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*,  
*Defendants.*

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AFFIDAVIT OF DELMER ISON

[Attached as Exhibit D to WMATA's Motion for  
Summary Judgment filed on August 20, 1982]

DISTRICT OF )  
 ) ss:  
COLUMBIA )

I, DELMER ISON, being first duly sworn, depose and  
say that:

1) I am the Secretary of the Washington Metropolitan  
Area Transit Authority ("WMATA") and its Acting  
Director of Claims.

2) My duties as Secretary and Acting Director of  
Claims provide me with personal knowledge of the work-  
ers' compensation program that applies to construction  
workers on the WMATA subway system.

3) WMATA, as the general contractor, has contracted  
with private construction companies, as subcontractors,  
to build the WMATA subway system.

4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA, as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

5) The plaintiff, Stanley Wilmes, was an employee of WMATA's subcontractors during the time he claims he sustained work-related lung injuries.

6) As an employee of WMATA subcontractors, Mr. Wilmes was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

8) The plaintiff has applied for compensation benefits for lung injuries, including silicosis, which he claims were caused by his alleged exposure to injurious substances while he was working on the WMATA subway system.

9) If the plaintiff prevails on his compensation claim, the compensation benefits will be provided from the compensation insurance purchased by WMATA.

10) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 19th day of August, 1982 in the District of Columbia.

/s/ Rose M. Remund  
Notary Public

My Commission Expires: Feb. 28, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-0114

STANLEY WILMES,

*Plaintiff,*

v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*,  
*Defendants.*

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit C to WMATA's Motion for  
Summary Judgment filed on August 20, 1982]

STATE OF VIRGINIA     )  
                                  ) ss:  
COUNTY OF FAIRFAX    )

I, DAVID L. SEWALL, being first duly sworn, depose  
and say that:

1) I am the Branch Claims Manager for the National  
Loss Control Service Corporation ("NATLSCO").

2) My duties as Branch Claims Manager provide me  
with personal knowledge of Mr. Stanley Wilmes' claim  
for worker's compensation based on injuries he allegedly  
sustained while employed by subcontractors working on  
the Washington Metropolitan Area Transit Authority  
("WMATA") subway system.

3) Mr. Wilmes claimed to have suffered lung injuries,  
including silicosis, because of his alleged exposure to

injurious substances while working on the construction of the WMATA subway system. Mr. Wilmes filed a claim for workmen's compensation benefits on or about October 3, 1978.

4) WMATA purchased workmen's compensation insurance that applied to the plaintiff. The plaintiff worked for subcontractors who did not purchase such compensation insurance. The insurance was purchased from Lumbermen's Mutual Casualty Company and it was administered by NATLSCO.

5) If the plaintiff prevails on his compensation claim for lung injuries, the compensation benefits will be provided from the compensation insurance purchased by WMATA.

6) The plaintiff's counsel at the time of his October, 1978, worker's compensation claim, and throughout all proceedings related thereto, has been his present counsel in this litigation, Ashcraft & Gerel. Accordingly, since October, 1978, plaintiff appears to have been continuously represented by Ashcraft & Gerel concerning his alleged lung injuries.

7) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 20th day of August, 1982 in the State of Virginia, City of Fairfax.

/s/ [Illegible]  
Notary Public

My Commission Expires: August 31, 1984

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-3057

JAMES BUCHANAN, *et ux.*,  
*Plaintiffs,*

v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*,  
*Defendants.*

---

**AFFIDAVIT OF DELMER ISON**

[Attached as Exhibit D to WMATA's Motion for  
Summary Judgment filed on September 14, 1982]

DISTRICT OF )  
 ) ss:  
COLUMBIA )

I, DELMER ISON, being first duly sworn, depose and say that:

1) I am the Secretary of the Washington Metropolitan Area Transit Authority ("WMATA") and its Acting Director of Claims.

2) My duties as Secretary and Acting Director of Claims provide me with personal knowledge of the workers' compensation program that applies to construction workers on the WMATA subway system.

3) WMATA, as the general contractor, has contracted with private construction companies, as subcontractors, to build the WMATA subway system.

4) The subcontractors do not provide workers' compensation insurance for their employees. Instead, WMATA,



as general contractor, provides workers' compensation insurance for the employees of its subcontractors.

5) The male plaintiff, James Buchanan, was an employee of WMATA's subcontractors during the time he claims to have sustained work-related lung injuries.

6) As an employee of WMATA subcontractors, Mr. Buchanan was covered by WMATA's workers' compensation insurance program for any alleged injury that occurred within the scope of his employment.

7) The compensation insurance carrier retained by WMATA is Lumbermen's Mutual Casualty Company and the compensation program was administered by the National Loss Control Service Corporation.

8) Mr. Buchanan has applied for compensation benefits for lung injuries which he claims were caused by his alleged exposure to injurious substances while he was working on the WMATA subway system.

9) If Mr. Buchanan prevails on his compensation claim, the compensation benefits will be provided from the compensation insurance purchased by WMATA.

10) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ Delmer Ison  
DELMER ISON

Subscribed and sworn to before me, a Notary Public, this 10th day of September, 1982 in the District of Columbia.

/s/ Lora D. Graves  
Notary Public, D.C.

My Commission Expires: Jan. 14, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-3057

JAMES BUCHANAN, *et ux.*,  
Plaintiffs,  
v.

BECHTEL CIVIL AND MINERALS, INC., *et al.*,  
Defendants.

---

AFFIDAVIT OF DAVID L. SEWALL

[Attached as Exhibit C to WMATA's Motion for  
Summary Judgment filed on September 14, 1982]

STATE OF VIRGINIA        )  
                                  ) ss:  
COUNTY OF FAIRFAX     )

I, DAVID L. SEWALL, being first duly sworn, depose  
and say that:

- 1) I am the Branch Claims Manager for the National  
Loss Control Service Corporation ("NATLSCO").
- 2) My duties as Branch Claims Manager provide me  
with personal knowledge of Mr. Buchanan's claim for  
worker's compensation based on injuries he allegedly sus-  
tained while employed by subcontractors working on  
the Washington Metropolitan Area Transit Authority  
("WMATA") subway system.
- 3) Mr. Buchanan claimed to have suffered lung in-  
juries because of his alleged exposure to injurious sub-  
stances while working on the construction of the WMATA  
subway system. Mr. Buchanan filed a claim for work-

men's compensation benefits on or about September 27, 1979.

4) WMATA purchased workmen's compensation insurance that applied to Mr. Buchanan. Mr. Buchanan worked for subcontractors who did not purchase such compensation insurance. The insurance was purchased from Lumbermen's Mutual Casualty Company and it was administered by NATLSCO.

5) If Mr. Buchanan prevails on his compensation claim for lung injuries, the compensation benefits will be provided from the compensation insurance purchased by WMATA.

6) The plaintiffs' counsel at the time of Mr. Buchanan's September 27, 1979, worker's compensation claim, and throughout all proceedings related thereto, have been plaintiffs' present counsel in this litigation, Ashcraft & Gerel. Accordingly, since September, 1979, plaintiffs appear to have been continuously represented by Ashcraft & Gerel concerning Mr. Buchanan's alleged lung injuries.

7) The statements made herein are true and correct to the best of my knowledge and belief.

/s/ David L. Sewall  
DAVID L. SEWALL

Subscribed and sworn to before me, a Notary Public, this 10th day of September, 1982 in the State of Virginia, City of Fairfax.

/s/ [Illegible]  
Notary Public

My Commission Expires: August 31, 1984

**[DEPARTMENT OF LABOR, OFFICE OF WORKMEN'S  
COMPENSATION PROGRAMS: JOINT PETITION  
FOR APPROVAL OF SETTLEMENT AGREEMENT]**

[Attached as Exhibit A to WMATA's Motion for  
Summary Judgment filed on August 21, 1982 in  
*Clanagan v. Bechtel Associates Professional  
Corp., D.C., et al., C.A. No. 81-1481*]

**ASHCRAFT & GEREL**  
ATTORNEYS AND COUNSELLORS AT LAW  
Suite 700  
2000 L Street, N.W.  
Washington, D.C. 20036

---

(202) 783-6400

June 15, 1982

The Honorable Janice V. Bryant  
Deputy Commissioner  
Office of Workers' Compensation  
Programs  
1111 - 20th Street, N.W.  
Washington, D.C. 20211

Re: John W. Clanagan  
Vs: Ball Healy Granite  
OWCP No. 126495  
D/A: 1/1/78

Dear Commissioner Bryant:

This is a joint petition by the parties in the above-captioned matter for approval of an agreed settlement, pursuant to Section 8(i) (A) of the Longshoremen's and Harbor Workers' Compensation Act and implementation regulation 702.241. In support of said application, the parties rely on the following facts:

1. On January 1, 1978, the claimant, John W. Clanagan, sustained an occupational lung disease while in the course of his employment with Ball Healy Granite.

2. At the time of his injury, the claimant's average weekly wage was \$505.00, providing him with a compensation rate of \$336.67.

3. The claimant has not received medical care for this condition, but he was advised, however, in January 1981, to obtain work other than that which involves work underground.

4. As noted above, the claimant was advised to do different employment than that which he was previously working at in January 1981. The claimant moved to Gainesville, Virginia, a rural area, where he has recently gone into business for himself selling firewood and performing odd jobs.

5. Although the claimant has sustained some permanent medical disability as a result of his condition of January 1, 1978, claimant and his counsel acknowledge that it will be difficult to establish that the claimant has sustained a loss of wage-earning capacity since he voluntarily removed himself from the Washington metropolitan area. Although earning a wage less than that which he was earning at the time of his occupational lung disease, it is further acknowledged that it will be difficult to establish a loss of wage-earning capacity as the area in which the claimant lives is economically depressed, and the wages, as a whole, are significantly lower than that in the District of Columbia. It is also important to note that the claimant intends to use part of the proceeds from this settlement to expand his present business operation to include the removal of trash.

6. Considering all of these circumstances, the employer and insurer have agreed to pay, and the claimant has agreed to accept, a lump sum in the amount of \$55,455.00 in settlement of this case.

7. The parties believe that the said agreed settlement is being made in the claimant's best interest.

8. The parties further agree that the said settlement is being made without prejudice to the claimant's right to continue to receive medical services for any condition which is causally related to his occupational lung disease of January 1, 1978.

9. The claimant has been fully advised of his rights under the Act and is fully aware that the approval of the said agreed settlement by the Deputy Commissioner will discharge the employer and insurer from any further liability in this matter, with the exception of medical services referred to in paragraph 8.

10. The law firm of Ashcraft & Gerel has represented the claimant continuously since June 1978 and has counseled him with regard to his case. In addition, counsel has continually reviewed his file from a legal and medical standpoint, and has engaged in negotiations with the employer and insurer in an effort to arrive at the agreed settlement.

The carrier has agreed to pay, in addition to the settlement figure of \$55,455.00, a fee of \$14,545.00 to the law firm of Ashcraft & Gerel. It is understood that this fee is separate from the settlement money aforementioned, and that \$545.00 will be used to pay for the medical reports of Drs. Steinberg and Mehlman.

Respectfully submitted,

/s/ John W. Clanagan  
JOHN W. CLANAGAN  
Claimant

/s/ Allen J. Lowe  
ALLEN J. LOWE  
Attorney for Claimant

/s/ James M. Barnes, Jr.  
Employer-Insurer

Date—6-19-82

**[DEPARTMENT OF LABOR, OFFICE OF WORKMEN'S  
COMPENSATION PROGRAMS: JOINT PETITION  
FOR APPROVAL OF SETTLEMENT AGREEMENT]**

[Attached as Exhibit A to WMATA's Motion for  
Summary Judgment filed on August 13, 1982 in  
*Walker v. Bechtel Associates Professional Corp.*,  
*D.C., et al.*, C.A. No. 81-1125]

**ASHCRAFT & GEREL**  
ATTORNEYS AND COUNSELLORS AT LAW  
Suite 700  
2000 L Street, N.W.  
Washington, D.C. 20036

---

The Honorable Janice V. Bryant  
Deputy Commissioner  
Office of Workmen's Compensation  
Programs  
1111 20th Street, N.W.  
Washington, D.C. 20211

Re: Calvin Walker v.  
Fruin and Colnon  
D/A: November 9, 1979  
OWCP No. 162512  
Carrier No. 202 CU 106191Z

Dear Commissioner Bryant:

This is a joint petition by the parties in the above captioned matter for approval of an agreed settlement, pursuant to Section 8(i)(A) of the Longshoremen's and Harbor Workers' Compensation Act and implementation regulation 702.241. In support of said application, the parties rely on the following facts:

1. On November 9, 1979, the claimant, Calvin Walker, was last exposed to underground dust, mists and fumes



in the course of his employment with Fruin and Colnon on the Bethesda Station Metro excavation.

2. At the time of his last injurious exposure, the employer was insured by Lumbermans Mutual Casualty Company.

3. The claimant's average weekly wage on November 9, 1979 was \$429.57 per week.

4. The carrier has controverted this claim on the basis of causally related disability, notice, the statute of limitations and the nature and extent of disability. No benefits have been paid to date.

5. Medical treatment has been provided by the Veterans Administration Hospital. No surgery is indicated and the claimant is not presently under active medical treatment.

6. Dr. David Simon has indicated that Mr. Walker has a moderate pulmonary impairment which disables him from underground construction work. Dr. Simon has indicated that the claimant is capable of performing sedentary work duties.

7. Because of the medical opinion of Dr. Philip Witorsch, claimant acknowledges that the claim for disability benefits in this case may not be awarded as claimed.

8. Under these circumstances, the carrier has agreed to pay and the claimant has agreed to accept lump sum in the amount of \$120,000 in settlement of this case.

9. The parties believe that the said agreed settlement is being made in his best interests.

10. The parties further agree that the said settlement is being made without prejudice to the claimant's right to continue to receive medical services for any conditions which are causally related to his injury of November 9, 1979.

11. The claimant has been fully advised of his rights under the Act and is fully aware that the approval of the said agreed settlement by the Deputy Commissioner will discharge the employer and insurer from any further liability in this matter, with the exception of medical services referred to in paragraph 10.

12. The law firm of Ashcraft & Gerel has represented the claimant continuously since August 7, 1980, and counseled with him with regard to his case. In addition, counsel has continually reviewed his file from a legal and medical standpoint and has engaged in negotiations with the employer and insurer in an effort to arrive at the agreed settlement.

Accordingly, the law firm of Ashcraft and Gerel is requesting approval of an attorney's fee in the amount of \$20,000. The amount of the fee has been discussed with the claimant, and he understands that it is to be deducted from the amount of the settlement and has agreed that the said fee is fair and reasonable.

Respectfully submitted,

/s/ Calvin Walker  
CALVIN WALKER  
Claimant

/s/ William F. Mulroney  
WILLIAM F. MULRONEY  
Attorney for Claimant

/s/ James M. Barnes, Jr.  
Employer-Insurer

EMPLOYMENT STANDARDS ADMINISTRATION

OFFICE OF WORKERS' COMPENSATION PROGRAMS

---

Case No. 132015

GLENWOOD WILLIAMS

*Claimant*

v.

BALL-HEALY-GRANITE

*Employer*

NATIONAL LOSS CONTROL

*Insurance Carrier*

---

COMPENSATION ORDER

[Attached as Exhibit 13 to the Plaintiff's Opposition to the Defendant's Motion for Summary Judgment filed on August 17, 1982 in *Williams v. Washington Metropolitan Area Transit Authority*, C.A. No. 82-0999]

APPROVAL OF AGREED SETTLEMENT—  
Section 8(i) (A)

Pursuant to agreement and stipulation by and between the interested parties, and such further investigation in the above entitled claim having been made as is considered necessary, and no hearing having been applied for by any party in interest, or considered necessary by the Deputy Commissioner, the Deputy Commissioner makes the following:

*FINDINGS OF FACT*

1. On 11-18-76, the claimant herein, while employed by the employer herein, suffered injury to his lung.

2. The liability of the employer for compensation under the Act was insured by National Loss Control.

3. The claim was controverted by the insurance carrier.

4. The parties have agreed on the pertinent issues and desire to settle the claim on the following basis: A lump sum of \$98,000.00 and future medical treatment for any condition that is causally related to the injury of 11-18-76.

5. The Deputy Commissioner, pursuant to the authority vested in her in section 8(i)(A) of the Longshoremen's and Harbor Workers' Compensation Act, as amended, finds that it is in the best interest of the employee, approves the agreed settlement, and effects a final disposition of claim, discharging the liability of the employer and insurance carrier for such compensation, except for medical treatment.

6. An attorney's fee in the amount of \$15,438.00 of which \$438.00 is to be used to pay Drs. Simon and Silver is hereby approved in favor of the firm of Ashcraft & Gerel. This fee is payable out of compensation due the claimant.

*ORDER*

It is ORDERED that the employer and insurance carrier shall pay forthwith all amounts due in accord with the settlement agreement, and file form LS-208 showing timely payment of the settlement amount.

Given under my hand and filed at Washington, D.C. this 28th day of August, 1981.

/s/ Janice V. Bryant  
JANICE V. BRYANT

[Certificate of Service Omitted in Printing]

EMPLOYMENT STANDARDS ADMINISTRATION

OFFICE OF WORKERS' COMPENSATION PROGRAMS

---

Case Nos. : 125242 and  
130053

PAUL JOHNSON

*Claimant*

v.

BALL, HEALY, GRANITE

*Employer*

LUMBERMEN'S MUTUAL CASUALTY CO.

*Insurance Carrier*

---

COMPENSATION ORDER

[Attached as Exhibit B to WMATA's Motion for  
Summary Judgment filed on June 21, 1982 in  
*Johnson v. Bechtel Associates Professional  
Corp., D.C., et al., C.A. No. 81-0963*]

APPROVAL OF AGREED SETTLEMENT—  
Section 8(i) A

Pursuant to agreement and stipulation by and between the interested parties, and such further investigation in the above entitled claim having been made as is considered necessary, and no hearing having been applied for by any party in interest, or considered necessary by the Deputy Commissioner, the Deputy Commissioner makes the following:

*FINDINGS OF FACT*

1. On April 22, 1978 and May 16, 1978, the claimant herein, while employed by the employer herein, suffered an occupational loss of hearing and an occupational pulmonary disease.

2. The liability of the employer for compensation under the Act was insured by Lumbermen's Mutual Casualty Company.

3. The claimant was provided with medical treatment and was paid compensation for such injuries.

4. The parties have agreed on the pertinent issues and desire to settle the claim on the following basis: An additional lump sum of \$9,000.00 and future medical treatment for any condition that is causally related to the injuries of April 22, 1978 and May 16, 1978.

5. The Deputy Commissioner, pursuant to the authority vested in her in Section 8(i)A of the Longshoremen's and Harbor Workers' Compensation Act, as amended, finds that it is in the best interest of the employee, approves the agreed settlement, and effects a final disposition of claim, discharging the liability of the employer and insurance carrier for such compensation, except for medical treatment.

6. An attorney's fee in the amount of \$2,159.00, of which \$150.00 is to be used to pay Dr. David B. Simon, is hereby approved in favor of the firm of Ashcraft & Gerel. This fee is payable out of compensation due the claimant.

*ORDER*

It is ORDERED that the employer and insurance carrier shall pay forthwith all amounts due in accord with the settlement agreement, and file form LS-208 showing timely payment of the settlement amount.

Given under my hand and filed at Washington, D.C.  
this 13th day of March, 1981.

/s/ Janice V. Bryant  
JANICE V. BRYANT  
Deputy Commissioner  
40th Compensation District



## CERTIFICATE OF FILING AND SERVICE

I certify that on March 13, 1981 the foregoing Compensation Order was filed in the Office of the Deputy Commissioner, 40th Compensation District and a copy thereof was mailed on said date by certified mail to the parties and their representatives at the last known address of each as follows:

Paul Johnson  
11235 Oakleaf Drive  
Silver Spring, MD 20902  
Claimant

Langley McKinney  
Lumbermen's Mutual Casualty  
8316 Arlington Blvd.  
Fairfax, VA 22031  
Insurance Carrier or Employer  
(if self-insured)

A copy was also mailed by regular mail to the following:

Director, Office of Workers' Compensation Programs,  
(LHWCA), U.S. Department of Labor,  
Washington, D.C. 20211

James F. Green, Esquire  
2000 L Street, N.W., #700  
Washington, DC 20036

/s/ Janice V. Bryant  
JANICE V. BRYANT  
Deputy Commissioner  
40th Compensation District  
U.S. Department of Labor  
EMPLOYMENT STANDARDS  
ADMINISTRATION  
Office of Workers' Compensation  
Programs

If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 percent thereof. The additional amount shall be paid at the same time as, but in addition to, such compensation.

The date compensation is due is the date of the Deputy Commissioner filed the decision or order in his office.

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS

---

Case No. 133142

HOWARD L. EIGHMEY

*Claimant*

v.

MCLEAN-GROVE-SKANSKA

*Employer*

NATIONAL LOSS CONTROL

*Insurance Carrier*

---

COMPENSATION ORDER

[Filed on pp. 128-29 of WMATA's Record Excerpts in  
*Johnson v. Bechtel Associates Professional Corp.,*  
*D.C., et al., No. 82-2017]*

APPROVAL OF AGREED SETTLEMENT—  
Section 8(i) (A)

Pursuant to agreement and stipulation by and between the interested parties, and such further investigation in the above entitled claim having been made as is considered necessary, and no hearing having been applied for by any party in interest, or considered necessary by the Deputy Commissioner, the Deputy Commissioner makes the following:

FINDINGS OF FACT

1. On January 19, 1979, the claimant herein, while employed by the employer herein, suffered injury to his back, head, neck and legs.
2. The liability of the employer for compensation under the Act was insured by National Loss Control.

3. The claimant was provided with medical treatment and was paid compensation for temporary total disability benefits to date.

4. The parties have agreed on the pertinent issues and desire to settle the claim on the following basis: An additional lump sum of \$80,000 and future medical treatment for any condition that is causally related to the injury of January 19, 1979.

5. The Deputy Commissioner, pursuant to the authority vested in her in section 8(i)(A) of the Longshoremen's and Harbor Workers' Compensation Act, as amended, finds that it is in the best interest of the employee, approves the agreed settlement, and effects a final disposition of claim, discharging the liability of the employer and insurance carrier for such compensation, except for medical treatment.

#### ORDER

It is ORDERED that the employer and insurance carrier shall pay forthwith all amounts due in accord with the settlement agreement, and file form LS-208 showing timely payment of the settlement amount.

Given under my hand and filed at Washington, D.C. this 15th day of July, 1981.

/s/ [Illegible]

**CERTIFICATE OF FILING AND SERVICE**

I certify that on July 15, 1981 the foregoing Compensation Order was filed in the Office of the Deputy Commissioner, 40th Compensation District and a copy thereof was mailed on said date by certified mail to the parties and their representatives at the last known address of each as follows:

**HOWARD EIGHMEY**

28 Via De Roa Drive, Stafford, VA 22554

Claimant

**LUMBERMENS MUTUAL CASUALTY CO.**

8316 Arlington Blvd, Fairfax, VA 22030

Insurance Carrier or Employer

(if self-insured)

A copy was also mailed by regular mail to the following:

Director, Office of Workers' Compensation Programs,  
(LHWCA), U.S. Department of Labor,  
Washington, D.C. 20211

William F. Mulroney, Esq.

2000 L Street, NW

Suite 700

Washington, DC 20036

/s/ Janice V. Bryant

JANICE V. BRYANT

Deputy Commissioner

40th Compensation District

U.S. Department of Labor

EMPLOYMENT STANDARDS

ADMINISTRATION

Office of Workers' Compensation  
Programs

If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an

amount equal to 20 percent thereof. The additional amount shall be paid at the same time as, but in addition to, such compensation.

The date compensation is due is the date of the Deputy Commissioner filed the decision or order in his office.

[Attached as Exhibit B to WMATA's Motion for  
Summary Judgment filed on August 20, 1982 in  
*Wilmes v. Bechtel Civil and Minerals, Inc.,  
et al.*, C.A. No. 81-0114]

U.S. DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
1717 K Street, N.W.  
Washington, D.C. 20211

RE: File No. \_\_\_\_\_

Claimant Stanley D. Wilmes

Employer Healy-Ball-Granite

Accident Date January of 1978

Gentlemen:

This is to notify you that I am hereby making claim for workmen's compensation benefits and am filing this claim with you in accordance with Sections 13 and 19 of the Longshoremen's and Harbor Workers' Compensation Act, as extended, by the District of Columbia Workmen's Compensation Act.

I was injured while I was working at Shaft #4, Washington, D.C., Metro Subway.

The accident occurred as a result of exposure to silica and other noxious elements during the course of my employment.

I sustained the following injuries: silicosis.

Please be advised that I have retained Ashcraft, Gerel & Koonz to represent me in this claim, and it is understood that any attorney's fee will be approved by the Office of Workers' Compensation Programs.

Date: 8 October 1978



Very truly yours,

/s/ Stanley Wilmes  
Claimant By His Attorney  
Attorney handling case:

\_\_\_\_\_ Lee C. Ashcraft  
\_\_\_\_\_ Joseph H. Koonz, Jr.  
\_\_\_\_\_ James A. Mannino  
\_\_\_\_\_ Mark L. Schaffer  
XXXXXX Robert B. Adams  
\_\_\_\_\_ Wayne M. Mansulla  
\_\_\_\_\_ James F. Green  
\_\_\_\_\_ William F. Mulronev  
\_\_\_\_\_ Carolyn M. Endress  
\_\_\_\_\_ David M. LaCivita

ASHCRAFT, GEREL & KOONZ  
Attorneys at Law  
2101 L Street, N.W., Suite 303  
Washington, D.C. 20037  
Telephone: 783-6400

[Attached as Exhibit B to WMATA's Motion for Summary Judgment filed on September 14, 1982 in *Buchanan v. Bechtel Civil and Minerals, Inc., et al.*, C.A. No. 81-3057]

U.S. DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
1111 - 20th Street, N.W., Suite 101  
Washington, D.C. 20211

RE: File No. 139707

Claimant James H. Buchanan

Employer McLean-Grove-Skanska

Accident Date December 13, 1978

Gentlemen:

This is to notify you that I am hereby making claim for workmen's compensation benefits and am filing this claim with you in accordance with Sections 18 and 19 of the Longshoremen's and Harbor Workers' Compensation Act, as extended, by the District of Columbia Workmen's Compensation Act.

I was injured while I was working at Wisconsin Avenue, N.W., Metro tunnel.

The accident occurred when I was exposed to dust in the tunnel.

I sustained the following injuries: Lungs.

Please be advised that I have retained Ashcraft, Gerel & Koonz to represent me in this claim, and it is understood that any attorney's fee will be approved by the Office of Workers' Compensation Programs.

Date: September 27, 1979

Very truly yours,

/s/ James H. Buchanan

Claimant

Attorney handling case:

\_\_\_\_\_ Lee C. Ashcraft  
 \_\_\_\_\_ Joseph H. Koonz, Jr.  
 \_\_\_\_\_ James A. Mannino  
 \_\_\_\_\_ Mark L. Schaffer  
 \_\_\_\_\_ Robert B. Adams  
 \_\_\_\_\_ Wayne M. Mansulla  
 \_\_\_\_\_ James F. Green  
       X William F. Mulroney  
 \_\_\_\_\_ Carolyn M. Endress  
 \_\_\_\_\_ David M. LaCivita  
 \_\_\_\_\_ Allen J. Lowe

ASHCRAFT, GEREL & KOONZ  
 Attorneys at Law  
 2101 L Street, N.W., Suite 303  
 Washington, D.C. 20037  
 Telephone: 783-6400

U.S. DEPARTMENT OF COMMERCE  
National Technical Information Service

PB-271 047

**GUIDELINES FOR IMPROVED RAPID TRANSIT  
TUNNELING SAFETY AND ENVIRONMENTAL  
IMPACT. VOLUME I. SAFETY**

(Attached as Exhibit to the Plaintiff's Supplemental  
Opposition to Defendant WMATA's Motion for  
Summary Judgment filed on August 5, 1982 in  
*Johnson v. Bechtel Associates Professional  
Corp., D.C., et al., C.A. No. 81-0968*]

A. A. Mathews, Inc, Rockville, Md.

Prepared for

Transportation Systems Center, Cambridge, Mass

Jan 77

UMTA-MA-06-0025-77-7

PB 271-047

REPORT NO. UMTA-MA-06-0025-77-7

**GUIDELINES FOR IMPROVED RAPID TRANSIT  
TUNNELING SAFETY AND  
ENVIRONMENTAL IMPACT  
Volume I: Safety**

A.A. Mathews, Inc.  
11900 Parklawn Drive  
Rockville MD 20852

[SEAL]

**JANUARY 1977**

**FINAL REPORT**

**Document is Available to the U.S. Public  
Through the National Technical Information Service,  
Springfield, Virginia 22161**

**Prepared for**

**U.S. DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION  
Office of Technology Development and Deployment  
Office of Rail Technology  
Washington DC 20590**

1. Report No. UMIA-MA-06-0025-77-7		2. Government Accession No.		3. Report's Catalog No.	
4. Title and Subtitle GUIDELINES FOR IMPROVED RAPID TRANSIT TUNNELING SAFETY AND ENVIRONMENTAL IMPACT Volume I: Safety				5. Report Date January 1977	
				6. Performing Organization Code	
7. Author(s) John D. Bladese and Arthur P. Chase				8. Performing Organization Report No. DOT-TSC-UMIA-77-2,1	
9. Performing Organization Name and Address A. A. Mathews, Inc.* 11900 Parklawn Drive Rockville, MD 20852				10. Stock Unit No. (78A41) MA-06-0025	
				11. Contract or Grant No. DOT-TSC-802-1	
12. Issuing Agency Name and Address U. S. Department of Transportation Urban Mass Transportation Administration 400 Seventh Street, S. W. Washington, D. C. 20390				13. Type of Report and Period Covered Volume I of II Volumes Final Report July 1976 - May 1976	
				14. Issuing Agency Code	
15. Supplementary Notes *All work performed under contract to:		U. S. Department of Transportation Transportation Systems Center Kendall Square Cambridge, MA 02142			
16. Abstract <p>Two of the major objectives of the Urban Mass Transportation Administration Tunneling Program are to lower subway construction costs and reduce construction hazards and damage to the environment. This study consists of a two-volume report and aims to develop guidelines for improved rapid transit tunneling safety and environmental impact, that is, this effort is directed toward underground construction applicable to modern transit subway systems in urban areas.</p> <p><u>Volume I: Safety.</u> Examination of construction safety regulations, tunnel construction accident data, and features of underground construction leading to unsafe work show that a systems approach to safety is required. Ten guidelines were drafted to supplement current construction safety regulations (OSHA 29CFR1926). Recommendations for further study and evaluation were made to complete the systems safety approach.</p> <p><u>Volume II: Environmental Impact.</u> Investigation of subway construction jobs shows that at least two principles underlie treatment of environmental problems. First, planning and design should consider both short-term and permanent damage to environment, and second, a need for better communication of contractor's planned activities and public concerns so that disruptions can be minimized. Guidelines were developed along these principles and are grouped into the following categories: general, community relations, and specific environmental control techniques.</p>					
17. Key Words a. Safety Underground Construction Safety Tunneling Safety Safety Statistics Guidelines			18. Distribution Statement Available to the Public through the National Technical Information Service Springfield, Virginia 22161.		
19. Security Classification (of this report) Unclassified		20. Security Classification (of this page) Unclassified		21. No. of Pages 117	
				22. Price PCARD \$01	

**NOTICE**

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**NOTICE**

The United States Government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the object of this report.



## PREFACE

This study to develop guidelines for improved rapid transit tunneling safety and environmental impact, described in this two-volume report, was sponsored by the Office of Rail Technology of the Urban Mass Transportation Administration, Office of Technology Development and Deployment. The effort was conducted under contract with the Transportation Systems Center, Contract DOT-TSC-802, for the Urban Rail Supporting Technology Program.

Santo J. Gozzo was contract technical monitor for the Transportation Systems Center. John D. Bledsoe of A. A. Mathews, Inc. was Project Manager responsible for overall coordination and co-author with Arthur P. Chase of Volume I—Safety. Sylvia N. Morrison coordinated the workshop program to survey attitudes of interested agencies and organizations. William C. Shepherd, Sr. served as Project Manager for the initial work on Phase A. Andrew C. Lemer of Alan M. Voorhees and Associates, Inc. was principal investigator and co-author with C. Y. Chang of Volume II—Environmental Impact. Howard Wright and Sally D. Liff conducted significant portions of the research for this volume.

There are significant differences among problems and potential users of guidelines for safety and environmental impact. For this reason, results of this study are presented in two volumes, dealing respectively with safety and environment.

The investigators gratefully acknowledge the assistance and information furnished by staffs of the Bay Area Rapid Transit District, the Washington Metropolitan Area Transit Authority, Metro Insurance Administration for WMATA, the Metropolitan Atlanta Rapid Transit Authority, the National Loss Control Service Corporation, and the many professionals who contributed to the survey phase of the contractual effort.

• • • •

### 3.2 FEATURES CONTRIBUTING TO UNSAFE WORK

This subsection addresses those features of the underground construction industry which contribute to unsafe work. The term "industry" is used loosely, since the discussion considers all parties involved—owner, designer, insurer, contractor, workman, and regulatory agent. Three items are considered under general discussion; the remainder are divided among five categories used in this study to incorporate all aspects of underground construction safety into a system.

Lack of vested interests in safety—it is unfortunate that at the present time, not one of the parties responsible for or involved in the construction of tunnels has the cause of safety as its primary vested interest. For example:

The OWNER of an urban transit system is faced with the responsibility of completing construction of the system within a specified time and budget prepared at an early date. His funds are usually derived from the sale of bonds, allocations from jurisdictions, and subsidies from the Federal Government. It is awkward to approach any of these with a request for extension of either time or money. At the same time, the owner is often faced with problems resulting from optimistic cost estimates made during preliminary planning which have become obsolete because of changes in final design and inflation.

The primary concern of the DESIGNER is to produce a design and the necessary contract documents such that permanence of the structure is assured and that the cost of construction will be reasonable. Rarely, if ever, is the designer charged by the owner with making safety of construction a paramount issue in the design.

The CONTRACTOR won the contract because his was the lowest bid. He no doubt spent many hours in finding

ways wherein he could economize and thereby arrive at the winning lowest bid. Having won the contract, the contractor now has the responsibility of completing the work and producing a profit.

The LABOR UNION is primarily interested in securing work at the highest possible rate for its membership. Rarely does a labor union have funds to provide pre-work training for its membership.

The INSUROR is a financial institution and is therefore solely interested in increasing its revenue and reducing its obligations. Only to this extent is the insurer interested in construction safety.

REGULATORY AGENCIES are so concerned with the administration of published regulations set forth by their superiors that they often lose sight of their objectives.

The prime interests are essentially those stated above, and, unfortunately, *the cause of safety is often neglected.*

b. Safety measures considered as extra cost items—for the most part, the parties actually involved in tunnel construction view safety measures as added cost items. For reasons noted in the subsection immediately above, the contractor is usually dedicated to reducing all costs which are not “pay” items, or are not part of the Work. (Work as used here means the finished construction.)

The owner, for reasons noted above, is equally interested in preventing the cost of construction from rising.

The agencies charged with subsidizing urban transit tunnels find themselves with widespread demands for their limited resources.

It is therefore concluded that, at the present time, safety is viewed as an extra cost item by many of those parties with a direct interest in, and having the resources for, the construction of urban transit tunnels. It should

be noted that this conclusion applies equally to all tunnel construction.

c. Division of responsibility or inadequate coordination at construction site—study of the report of investigation of a recent explosion in modern tunnel construction (Reference 6) indicates that two prime contractors were working independently near opposite ends of a 6 mile tunnel at the time of an explosion. The tunnel had been driven through gassy shale. One contractor was working in the tunnel installing concrete lining. The other was working offshore, preparing to construct an inlet shaft to the tunnel. Either closer coordination between the contractors or control of all work under one authority might have prevented the mishap.

### 3.2.1 *Attitudes and Incentives*

Attitude and incentive of both contractor and workman is a complex subject in which factors are often inter-related. Following are items known to be important.

a. Contractor selection criteria—contractors are presently selected on the following basis:

1. Low bid
2. Balanced bid, or not so unbalanced as to disqualify
3. Sufficient capital or bonding capacity to assure job completion
4. Contractor's experience on similar jobs.

It should be noted that the contractor's safety record on previous jobs is absent from the criteria noted above. Only one case is known to the investigators wherein a contractor's previous safety record resulted in disqualification from bidding. The California Highway Department recently disqualified a contractor who had an unacceptable safety record.

b. Schedule of payments to the contractor—the contractor is usually faced with a cash flow problem at the

beginning of the contract. Even when progress payments are awarded for the mobilization of plant and equipment, they are rarely sufficient to cover actual costs. The contractor is therefore required to borrow money or invest from his own resources to cover the balance. It is typical for a contract to be about one-third finished before progress payments for completed work are sufficient for the contractor to reach the break-even point. Inflated interest rates intensify this problem. Therefore, the contractor's inclination, if indeed not his only recourse, is to curtail costs at contract initiation, and this includes costs relating to safety.

c. Role of insurance—system-wide insurance plans help isolate the contractor from his responsibilities for safety. As currently structured in the Washington Metropolitan Transit construction, the owner pays all premiums for both workmen's compensation and general liability insurance, leaving the contractor responsible for deductibles for each claim, and for such items as automobile liability equipment insurance. Similarly, the owner receives any dividends (rebates) which may be returned by the insurer. The contractor shares in neither the monetary penalty for unsafe work nor the benefit for safe work, except in a limited way.

d. Contractor's attitude toward safety statistics—occasionally, the contractor's staff is interested in enhancing safety statistics to the extent that lost time days are not fully reported. This is usually done by bringing anyone who has suffered an accident to the jobsite and keeping him on the payroll so long as he is able to perform some useful function. Although this provides the workman with more income than he would obtain from workman's compensation, it biases safety statistics. Reaction of workmen toward this practice appears mixed, partly adverse toward safety awards and programs and partly favorable toward the company for aid in maintaining a stable income while recuperating.



e. Workmen's attitude toward safe practices—it has been established (Reference 7) that workmen will accept voluntary risks more readily than involuntary risks. In other words, workmen will freely expose themselves to danger while, at the same time, they would resist being directed to exposure to the same danger by their foremen. The reasons for such motivation are not clear. It can be explained in part by the attitude of displaying masculinity by the disregard of personal safety. This has historically been a difficult problem to overcome, and the solution will only be accomplished when a way is found to make safe procedures and the use of safety equipment fashionable among construction workmen.

\* \* \*

#### 4.2.1 *Areas Not Covered by Safety Regulations*

Limitations of construction safety regulations are noted above. Hazards in tunnel construction and features contributing to unsafe work were enumerated in Section 3. In general terms, many safety problems have their origins in activities which either precede the actual construction, or which are only indirectly involved in construction.

Some specific areas not covered by safety regulations are:

- a. Definition of a safety program for both owner and contractor
- b. Selection of contractor
- c. Insurance programs for construction of complex multi-contract systems
- d. Scheduling of individual construction jobs in a large multi-contract system
- e. Specification of underground exploration prior to final design and construction

f. Criteria to be considered in final design and preparation of contract documents

g. Anticipation of and preparation for encountering natural hazards

h. Training and indoctrination of the work force.

In addition, there are factors such as safety standards for equipment and work under compressed air, for which existing regulations should be extended or modified.

#### 4.2.2. *Systems Approach to Construction Safety*

Adequate construction safety regulations have been in effect for a long time, with no noticeable trend toward safer tunnel construction. It is therefore obvious that new elements must be introduced into the overall safety program for the situation to improve. A systems approach needs to be adopted for safety in underground construction.

\* \* \* \*



**AGREEMENT**

**Among**

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY,**

**LUMBERMENS MUTUAL CASUALTY COMPANY,**

**and**

**NATIONAL LOSS CONTROL SERVICE  
CORPORATION**

[Attached as Exhibit #6 to the Plaintiffs' Supplemental  
Opposition to Defendant's Motion for Summary  
Judgment filed on October 15, 1982 in  
*Buchanan v. Bechtel Civil and  
Minerals, Inc., et al.,*  
C.A. 81-8057]

Agreement made as of the 30th day of July, 1971, among Washington Metropolitan Area Transit Authority, a public authority ("WMATA"), Lumbermens Mutual Casualty Company, an Illinois mutual insurance company ("LMC"), and National Loss Control Service Corporation, an Illinois corporation ("NATLSCO").

*Witnesseth:*

*Whereas*, WMATA issued specifications for a Coordinated Insurance Program dated April, 1971; and

*Whereas*, in response thereto LMC submitted to WMATA and Metro Insurance Administrators (MIA) a proposal (attached as Appendix A hereto) to provide workmen's compensation and general liability insurance, at a price and upon terms therein stated; and

*Whereas*, NATLSCO submitted to WMATA and MIA a proposal (attached as Appendix D hereto) to provide workmen's compensation and general liability insurance claim and loss control service at a price and upon terms therein stated; and

*Whereas*, WMATA desires to accept the said proposals of LMC and NATLSCO,

*Now, Therefore*, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

**SECTION A. LMC AGREES:**

1. To provide workmen's compensation insurance and general liability insurance in substantial conformity with WMATA's specifications above described, subject to the terms stated in LMC's proposal set forth in Appendix A hereto. Policies for such insurance shall be issued to become effective at 12:01 A.M., EDT, July 30, 1971 unless otherwise agreed upon by the parties hereto. The premium for such insurance shall be calculated and paid in the manner set forth in Appendix A hereto.

2. To include Bechtel Corporation as an insured under the workmen's compensation and general liability policies aforesaid on one of the three alternatives set forth in Appendix B hereto, to be selected by WMATA. Provided, however, in the event WMATA fails to inform LMC of its selected alternative within 30 days from the date of this Agreement, alternative A in Appendix B hereto shall be deemed to have been selected.

3. To provide construction contract surety bonds to small business and minority enterprises as requested by WMATA, subject to the terms of Appendix C hereto. The premium for such bonds shall be determined in accordance with LMC's applicable manuals, rules and rates in effect at the time of issuance. The premium and any SBA fee shall be payable by the principal under such bonds.

4. To accept NATLSCO and its claim and loss control services as meeting LMC's requirements set forth on the page of Appendix A hereto, entitled "Special Servicing Requirements".

#### **SECTION B. NATLSCO AGREES:**

1. To provide workmen's compensation and general liability insurance loss control services consisting of the following:

(a) services of NATLSCO's Safety Services Division Manager on a two day per month basis to provide a periodic overview and evaluation of NATLSCO's total control assistance efforts.

(b) services of a full-time resident loss control service manager to provide daily supervision and direction of NATLSCO's loss control assistance efforts.

(c) services of full-time loss control field consultants to perform regular on-site safety inspections and to provide other appropriate assistance to

WMATA in the development and implementation of its Metro System Safety Program. The number of field consultants will generally be maintained at a ratio of 1 consultant for each 10 heavy construction contracts.

(d) services of industrial hygienists and occupational health consultants, where appropriate or when specifically requested by WMATA, to evaluate occupational disease exposure and to assist in the development of necessary first aid and medical facilities, procedures and records.

2. To provide workmen's compensation and general liability claim services as follows:

(a) services of a full-time resident claim service manager to provide daily supervision and direction of NATLSCO's claim service efforts.

(b) services of full-time claim supervisors, claim adjusters and claim clerical personnel in sufficient numbers to adequately handle the volume of workmen's compensation and general liability claims with respect to which insurance is afforded under the terms of this Agreement.

(c) claim reporting procedures, investigation of all reported claims, establishment of appropriate claim files and reports, authorization of claim payments, assistance to attorneys selected by LMC and other functions usual to the rendering of insurance related claim service.

3. That NATLSCO's service fee for the above-described loss control and claim services will be at the rate of \$0.9377 per \$100.00 of payroll. The term "payroll" means the audited workmen's compensation payroll for all employees covered under the subject LMC insurance plan for WMATA. NATLSCO will bill WMATA on a monthly basis for an amount equal to one-twelfth

of its total estimated annual service fee for a given year. Final adjustment of the total annual service fee will be subject to a payroll audit. It is also agreed that the annual service fee for any given year will be appropriately adjusted for variations in actual assigned claim service manpower from that estimated in NATLSCO's "Proposed Loss Control & Claim Services to WMATA", (Appendix D, hereto).

4. That all services set forth in Appendix D hereto shall be furnished by NATLSCO and in the event of conflict between those terms and the terms set forth in the foregoing paragraphs 1 through 3, the terms of Appendix D shall control.

#### **SECTION C. WMATA AGREES:**

1. To pay all service fees, premiums and advance premiums when due, as provided in this Agreement.

2. To reasonably and faithfully perform its safety obligations, and to give good faith consideration to the recommendations of NATLSCO in the performance of its loss control services.

3. To apply to the District of Columbia City Council for a specific waiver of a regulation limiting the cancellation of insurance policies in the District of Columbia which became effective May 1, 1971, to the extent that such regulation relates to this Agreement or to the insurance agreed to be provided herein.

#### **SECTION D. THE PARTIES HERETO MUTUALLY AGREE:**

1. That the insurance and services to be provided hereunder shall be effective at 12:01 A.M., EDT, July 30, 1971. Subject to the terms of Appendix A, on the page entitled "General Comment", and to the terms of policies of insurance issued pursuant to this Agreement, and to the terms of cancellation hereinafter provided, this Agreement shall continue in force until 12:01 A.M.,

EDT, July 1, 1974 whereupon it shall terminate. Provided, however, the insurance agreed to be provided under the terms of Appendix C shall be effective at such dates and shall be issued for such terms as shall be appropriate under the circumstances, and such insurance shall not otherwise be subject to the terms of this paragraph D1.

2. That this Agreement may be terminated by any party hereto by giving to the other parties written notice stating when, not less than 90 days thereafter, such cancellation shall be effective. Provided, however,

(a) Any policy of insurance issued pursuant to this Agreement may be cancelled in the manner provided in such policy, except that as respects cancellation by WMATA or by LMC of any workmen's compensation or generally liability policy, not less than 90 days notice shall be given.

(b) In the event of cancellation of this Agreement by WMATA for any reason other than a cancellation of workmen's compensation or general liability insurance by LMC, WMATA agrees to fully reimburse NATLSCO for its various unrecoverable start-up expenses incurred in the establishment of special office facilities and staff in Washington, D.C. These will amount to \$218,000 if cancellation is made during the first year and then decreasing uniformly down to \$28,000 at the end of the second year. Provided, however, that this subparagraph (b) shall not apply to any cancellation by WMATA effective on or after July 30, 1973.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and attested on their behalf by their duly authorized officers under their respective corporate seals on the day first above written.



WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

By /s/ DELMER ISON  
Title: Contracting Officer

ATTEST:

/s/ [Illegible]  
Title: Asst. Sec.

LUMBERMENS MUTUAL CASUALTY  
COMPANY

By /s/ [Illegible]  
Title: Vice President

ATTEST:

/s/ [Illegible]  
Title: Secretary

NATIONAL LOSS CONTROL SERVICE  
CORPORATION

By /s/ [Illegible]  
Title: President

ATTEST:

/s/ [Illegible]  
Title: Secretary



**KEMPER**  
Insurance

Mutual Insurance Building • Chicago 40

Longbeach 1-8000

May 17, 1971

Mr. Arthur V. Erickson  
Metro Insurance Administrators  
955 L'Enfant Plaza S.W.  
Room 8209  
Washington, D.C. 20024

Dear Art:

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
WORKMEN'S COMPENSATION & GENERAL LIABILITY  
PROPOSAL EFFECTIVE 7-1-71**

It is a pleasure to submit our proposal for this insurance. The attachments explain our pricing methods, coverages, services and requirements in accordance with the specifications for the Coordinated Insurance Program dated April 1971. In those areas where we have departed from the specifications, proper explanation has been given.

It is our earnest desire to be awarded this business and enjoy a continuous, profitable and mutually advantageous relationship.

Cordially

/s/ S. E. Asquith  
S. E. ASQUITH  
Special Risks Underwriting Department  
397-7-B88

**APPENDIX A**

*prepared for*

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**

*submitted by*

**METRO INSURANCE ADMINISTRATORS  
955 L'ENFANT PLAZA S.W.  
ROOM 3209  
WASHINGTON, D.C. 20024**

**[SEAL]**

### *General Statement*

This proposal is offered on behalf of Lumbermens Mutual Casualty Company.

A single quotation consisting of two parts follows:

1. **Primary Plan.** The National Defense Projects Rating Plan, with certain modifications to recognize special service provisions, is the basis of this part applying to both Workmens Compensation and General Liability.
2. **Excess Plan.** This is a normal excess plan for general liability limits in excess of limits included in the primary plan.

Those services normally provided for Loss Control Engineering and Claim handling will not be provided under the program and must be contracted for separately. Minimum standards of such services are incorporated later in the proposal.

We will assist WMATA in the development of a program to provide construction contract surety bonds to small business and minority enterprises. We will participate in such a program.

### *Primary Rating Plan*

#### *Plan Premium*

<b>Term</b>	— 3 years cumulative 7-1-71 to 7-1-74
<b>Basic Premium Factor</b>	— 4.5% of Plan Premium
<b>Tax Factor</b>	— 1.03 estimated. Determined annually from rating manuals and applied separately by coverage and by state per retrospective rating plan rules.
<b>Minimum</b>	— Basic Premium x Taxes

- Maximum — Plan Premium  
Payrolls x Rate
- Loss Limitation — Workmens Compensation  
\$1,000,000 per accident  
including allocated loss  
expense  
General Liability  
\$1,000,000 per occurrence,  
including allocated loss  
expense
- Loss Conversion Factor — None
- Net Cost Formula — Maximum Premium less  
(.045 of Maximum Premium  
plus limited losses, including  
allocated loss expenses) x Tax  
Factors.)
- Premium Adjustments — Six months following the first  
anniversary of the plan, and  
each 12 months thereafter on  
a cumulative basis, until all  
claims are closed or WMATA  
and the Company mutually  
agree to a final determination.

### Premium Calculation

#### Plan Premium

Period	Coverage	Payroll Estimate	Rate	Premium
7-1-71	WC	20,641,600	6.72	1,387,116
7-1-72	GL	20,641,600	4.89	1,009,374
			<b>TOTAL</b>	<b>2,396,490</b>
7-1-72	WC	105,733,300	6.53	6,904,384
7-1-73	GL	105,733,300	4.89	5,170,358
			<b>TOTAL</b>	<b>12,074,742</b>
7-1-73	WC	174,459,800	5.94	10,362,912
7-1-74	GL	174,459,800	4.89	8,531,084
			<b>TOTAL</b>	<b>18,893,996</b>

Three Year Total    \$33,365,228

Payroll estimates and WC rate to be redetermined prior to 7-1-72 and 7-1-73 anniversary.

*Premium Calculation**Excess Plan*

Period	Payroll Estimate	Rate	Maximum Premium *	Minimum Premium *
7-1-71 to 7-1-72	20,641,600	1.55	319,945	239,959
7-1-72 to 7-1-73	105,733,300	1.55	1,638,866	1,229,150
7-1-73 to 7-1-74	174,459,800	1.55	2,704,127	2,028,095
			4,662,938	3,497,204

\* In addition to the premiums shown above, there shall be added a flat amount representing 108% of the net cost to the company of facultative re-insurance. These premiums will not be subject to adjustment for experience.

The cost to us is  $\$250,000 \times 1.08 = \$270,000$  cost to WMATA.

Premium includes taxes.

Rate guaranteed for the term of the plan and applies per \$100. of WC payroll

The premium will be adjusted on the basis of:

Incurred losses, including allocated loss expense  $\div .50$   
(Subject to Minimum & Maximum)

Return premium adjustments will be made to the escrow account.

*Rate Development**Workmens Compensation*

District of Columbia manual rates will be used to develop a composite rate. Such rate will apply for a period of 12 months and will be revised annually. The rate will be adjusted mid-term only in the event that a District of Columbia benefit level change results in a mid-term percentage rate change (as promulgated by the National Council) for application to all other Workmens Compensation policy-holders.

*Appendix A [con't]*

The formula for producing this rate is:

- A. Manual rates X estimated payrolls by classification
- B. Premium produced above  $\div$  payroll used above
- C. Rate = .56 X rate produced in B above X Tax 1.028

Data in the specifications result in the following rates:

Year	Payroll	Manual Premium	Manual Rate	Policy Rate
7-1-71/72	20,641,600	2,408,893	11.67	6.72
7-1-72/73	105,733,300	12,005,376	11.35	6.55
7-1-73/74	174,459,800	17,996,407	10.32	5.94

Rates for the 1972 and 1973 years are shown for illustrative purposes only. For these years, rates then current will be applied to revised estimates of payroll by classification to produce the rate for these years in accordance with the formula above.

#### *General Liability*

This composite rate was promulgated by the Company specifically for this exposure. The rate applies per \$100. of payroll and is guaranteed for three years.

**Note:** Payroll for both coverages shall be Workmens Compensation payroll subject to all rules pertaining to overtime, limitation, etc. that apply in the District of Columbia.

#### *Cancellation Provisions*

Cancellation or non-renewal of any policy written under this rating plan shall cancel the plan, and premium adjustments shall be computed as follows:

#### **Appendix A [con't]**

- A. By WMATA. The plan premium for the period the policies are in force shall be computed from the actual audited payrolls.

If the cancellation occurs within the first year, or on the first anniversary, the premiums will be surcharged 40%. During the second year and on the second anniversary, a 25% surcharge will apply. A 10% surcharge will apply during the third year. No further premium adjustments shall be made.

The Excess premium will be computed on a short rate basis.

- B. By the Company. All premiums will be computed on a pro rata basis.

#### *Special Servicing Requirements*

Lumbermens Mutual Casualty Company does not contemplate providing Loss Control Engineering or Claim service and the pricing has been adjusted for this. Such services are required but must be contracted and provided separately.

Services required must be of a type and quality that would otherwise be offered by Lumbermens Mutual Casualty Company and be compatable [sic] with our data processing needs. Accordingly, Lumbermens Mutual Casualty Company must approve WMATA's selection of the contractor who shall perform these services.



**KEMPER**

**Insurance**

**Mutual Insurance Building • Chicago 60640**

**Telephone 561-800 (Area 312)**

**July 21, 1971**

**Mr. Arthur V. Erickson  
Metro Insurance Administrators  
955 L'Enfant Plaza S.W.  
Room 3209  
Washington, D.C. 20024**

**Dear Art:**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SURETY BONDS**

**The following is an addendum to our Casualty Proposal.  
The General Statement as related to construction contract  
surety bonds for small business and minority enterprises  
contemplates the following:**

- A. Extension of the Small Business Administration  
Surety Bond Guarantee Program to the Wash-  
ington, D.C. area whereby the SBA will provide  
90% indemnity for any loss and we will retain  
the remaining 10%.**
- B. WMATA will not accept bids from such contrac-  
tors whose bids are obviously deficient.**
- C. Both WMATA and SBA will look to us to care-  
fully underwrite these bonds.**
- D. No such bonds will be offered to the SBA with-  
out our underwriting approval.**

E. Our commitment is limited to those bonds which come under the terms of the SBA program—namely, bid, performance and payment bonds.

Cordially,

/s/ S. E. Asquith  
S. E. ASQUITH  
Special Risk Underwriting Department  
81-7-955

4750 Sheridan Road. Chicago 60640. Tel 312-248-1559

**NATIONAL LOSS CONTROL SERVICE CORPORATION**

May 25, 1971

Mr. Arthur V. Erickson  
Johnson & Higgins  
95 Wall Street  
New York, New York 10005

Dear Mr. Erickson:

Confirming Lou Regine's recent conversation with you, the following represents a projection of our probable three year loss control and claim service fees for Washington Metropolitan Area Transit Authority at various assumed loss levels:

<u>Assumed 3 Year WC and GL Losses</u>	<u>Total Probable NATLSCO Service Fees</u>
2,500,000	1,362,000
5,000,000	1,524,000
10,000,000	1,848,000
15,000,000	2,173,000
20,000,000	2,497,000
25,000,000	2,821,000
30,800,000	2,821,000

In developing this comparative breakdown, it was assumed that our loss control service fee would remain constant at all loss levels and that 30% of our projected claim service fee would essentially remain unresponsive to changes in the loss level. It was further assumed that the remaining 70% of our claim service fee would vary in direction proportion to differences in loss levels between 0 and \$25,000,000.

As total dollar losses between any two levels obviously do not necessarily reflect corresponding differences in actual claim expenses as between these levels, it should be understood that these data are being supplied to you at this time solely for the purpose of permitting you to make

**APPENDIX D**

an approximate comparison of our probable service costs with those of the other two competing organizations.

Our actual service fees will directly reflect the specific claim service manpower and facilities which will be provided by us to handle the actual volume and mix of Workmen's Compensation and General Liability claims which are generated within the Washington Metropolitan Area Transit Authority program over the three year contract period. At any given loss level, this may result in a lower or higher service fee than that indicated in the previously outlined tabulation.

Trusting that this information satisfies your needs in this area, I remain

Yours very truly,

/s/ Gerald L. Maatman  
GERALD L. MAATMAN  
President  
GLM:mi

Environmental Evaluation  
Industrial Hygiene Laboratory  
Safety and Accident Control  
Industrial & Municipal Fire Protection  
Boiler & Machinery Service  
Alcoholism & Behavioral Problem Surveys

Appendix D [con't]

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

By /s/ Delmer Ison  
(Title) Contracting Officer

Attest: [Illegible]  
(Title)

Date: September 27, 1978

NATIONAL LOSS CONTROL SERVICE  
CORPORATION

By /s/ R. W. Satterfield  
(Title) President

Attest: [Illegible]  
(Title) Ass't. Secretary

[SEAL]

WASHINGTON  
METROPOLITAN  
AREA TRANSIT  
AUTHORITY

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INSURANCE  
SPECIFICATIONS  
FOR  
CONSTRUCTION  
PROJECTS

[Attached as Exhibit #5 to the Plaintiff's Supplemental  
Opposition to Defendant's Motion for Summary  
Judgment filed on October 15, 1982 in  
*Buchanan v. Bechtel Civil and  
Minerals, Inc., et al.,*  
C.A. No. 81-3057]

NOVEMBER 1973

**INSURANCE SPECIFICATIONS  
FOR  
CONSTRUCTION PROJECTS**

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**SPECIFICATIONS OF THE  
COORDINATED INSURANCE PROGRAM OF  
SPECIFICATIONS OF THE  
WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**

(November 1973 Edition)

**INTRODUCTION**

The Coordinated Insurance Program is a method of guaranteeing that all contractors and subcontractors of whatever tier and the Washington Metropolitan Area Transit Authority are covered for Statutory Workmen's Compensation-Employer's Liability Insurance (D.C. benefits), Comprehensive General Liability, including Products Insurance & All Risk Builders Risk Insurance. These policies DO NOT cover automobile liability insurance, and this coverage must be secured by the contractor at his own expense and through his own efforts. Appendices A, B & C of this document provide the primary policies of the Coordinated Insurance Program made available to contractors and subcontractors by WMATA. Excess policies, referred to on Page 4, Section C, are also purchased by WMATA. Copies are available for inspection at the offices of Metro Insurance Administrators. The contractors may, at their own expense and effort, obtain any other insurance they deem necessary.

Insurance premium costs for the coverages provided are paid by WMATA and contractors are expected to recognize this fact when submitting their bids.

Any questions pertaining to these Insurance Specifications should be directed to:

**Director  
Metro Insurance Administrators  
955 N. L'Enfant Plaza, S.W., Suite 6077  
Washington, D.C. 20024  
Telephone: 202, 484-3166**

## DEFINITIONS

**A. WORKMEN'S COMPENSATION, EMPLOYERS' LIABILITY AND COMPREHENSIVE GENERAL LIABILITY.** The following definitions apply:

1. *Contractor* means Authority's contractor and his subcontractors of any tier who perform operations at the construction site.
2. *Construction Site* means those areas described in a contract between WMATA and the contractor, including authorized or approved additional sites necessary or incidental thereto.
3. *Subcontractor* means any individual, firm, venture or corporation undertaking construction or other services requiring labor at or from the construction site. Subcontractor shall not mean Authority's contractor or vendors, suppliers, material dealers or others who merely transport matter, materials, parts of equipment to or from the construction site.
4. Contractor or subcontractor *does not mean* any of the following:

For the purposes of this insurance, contractor or subcontractor does not mean or include coverage for any privately owned publicly regulated utility company.

5. Contractor or subcontractor *does not mean* any demolition contractor with a contract let by the WMATA Office of Real Estate. If such demolition contractor is a subcontractor to a contractor as defined above, such demolition contractor is insured hereunder.

## B. BUILDERS RISK INSURANCE

With respect to Builders Risk Insurance (Appendix C), the following definitions shall apply:

1. *Contractor* means any individual, firm, venture or corporation performing on behalf of the Authority either a construction contract or a contract for furnishing or installing equipment or materials.
2. *Subcontractor* means any individual, firm, venture or corporation performing on behalf of the Authority's contractor a contract for furnishing or installing equipment and materials.

## GENERAL DESCRIPTION OF THE INSURANCE PROGRAM

The Authority will, for the benefit of contractors and others, procure and pay premiums for the insurance coverages described below in items A, B, C, D and E.

### A. *Workmens Compensation and Employers' Liability Insurance*—with limits of liability as follows:

1. Workmens Compensation Coverage—statutory
2. Employers' Liability with limits of:
  - \$1,000,000 each person
  - \$1,000,000 each accident or disease—each insured
  - \$5,000,000 each accident or disease—for all insured combined

*See Appendix A for full policy wording*

### B. *Comprehensive General Liability Insurance*—with combined single limits of liability as follows:

\$5,000,000 each occurrence—each insured  
 \$25,000,000 each occurrence—for all insured  
 combined  
 \$5,000,000 annual aggregate—each insured

*See Appendix B for full policy wording*

- C. *Excess Liability Insurance*—\$45,000,000 each accident or occurrence/\$45,000,000 annual aggregates in excess of the underlying limits and terms as set forth in Appendices A and B and limits available to the Washington Metropolitan Area Transit Authority under certain other policies. Regardless of the amount of any claim for damages; the number of insureds covered; or the number of underlying policies, the total limit of the excess coverage provided shall not exceed \$45,000,000 for all damages arising out of one accident or occurrence.
- D. *Builders Risk Insurance*—limit of \$30,000,000 in the form and subject to the provisions of Appendix C. The portion of any loss falling within the deductible provisions specified in Appendix C will be self-insured by the Authority for the benefit of all insureds under the Authority's insurance policies, except that the Contractor and/or his subcontractor(s) will be responsible for the first \$10,000 of any claim(s) arising out of one occurrence in which the Contractor and/or his subcontractor(s) have an insurable interest.

*See Appendix C for full policy wording*

- E. *Railroad Protective Liability Insurance*—as required and in connection with a contractor's performance on railroad property under his contract.

**NOTE:** Certificates of Insurance evidencing the above coverages will be issued as required on

behalf of those contractors and subcontractors covered by the policies.

### **SPECIAL PROVISIONS OF THE INSURANCE PROGRAM**

- A. Contractor shall, within 60 days after the award of the contract, supply the Contracting Officer with a lump sum estimate of all wages, *excluding fringe benefits*, to be reported under the Davis-Bacon Act (40 U.S.C. 276-a(7)) during the performance of this contract including wages of the contractor and subcontractor of any tiers.
- B. The insurances by WMATA (except for the All Risk Course of Construction Insurance) applies only to the operations of, and for, each contractor at and from the construction site and any other approved site. It does not apply to the operations of any contractor in his regularly established main or branch office, factory, warehouse, or similar place nor to any employees of such operations.
- C. Loss, if any, covered by All Risk Course of Construction Insurance is to be made adjustable with and payable to the Authority.
- D. The Authority reserves the right to change the terms and conditions of its Insurance Program, provided, however, that no changes may be made which, in the opinion of the Authority, substantially reduce the coverage set forth in these Insurance Specifications.
- E. If any insurance company providing coverage cancels such insurance, the Authority shall give all contractors insured thirty (30) days' written notice of cancellation. In the event of such cancellation, the Authority shall, at its option, at

least five days prior to the effective date of cancellation:

procure alternate insurance coverage for the policy or policies cancelled; or require contractor to procure and maintain alternate insurance coverage for the policy or policies cancelled, the amounts, policy wording and insurance company shall be satisfactory to the Authority. Authority will reimburse contractor for the actual premiums for contractor's alternate insurance coverage. In the event of such cancellation, these Insurance Specifications shall remain in full force and effect except for those portions which in the opinion of the Authority, conflict with said alternate insurance coverage.

- F. Assignment—Upon the request of the Contracting Officer, the contractor and each of his subcontractors shall execute an assignment for the benefit of the Authority, in a form to be approved by the Authority, of any return premiums, premium refunds, dividends and any other moneys due or to become due in connection with the insurance which the Authority herein agrees to provide.
- G. There is no other type of insurance and no higher limits than those described herein. Any increase in limits of liability or any other type of insurance not described above which the contractor or any of his subcontractors obtain for their own protection or because of statute shall be their own responsibility and at their own expense.
- H. The contractor and his subcontractors shall cooperate with and assist in every possible manner the representatives of the Authority, its consult-

ants, insurance representatives and the insurers of the policies described in the Specifications with respect to:

1. The implementation of the Authority's Co-ordinated Safety and Loss Control Program; and
  2. The adjustment of all claims arising out of operations within the scope of the contract, including the litigation of such claims.
- I. The contractor shall at all times cooperate with and assist the insurance companies issuing any of the policies of insurance mentioned in the Specifications in the preparation of all necessary pertinent payroll audits for the purpose of developing and determining all premiums thereunder, and shall keep records relating to the contract work in such manner that said records can readily be separated from other work the contractor is doing. In order to enable the Authority to verify the premiums to be developed by the insurance companies, the contractor shall make available to insurance company's auditors, at the construction site, all payroll data for the contract work for the period being audited.
- J. The provisions of the Insurance Specifications as described shall apply to the contractor and his subcontractors of any tier, and these Insurance Specifications shall be incorporated in any contract or agreement between the contractor and subcontractors of any tier who perform work under this contract.
- K. Prime Contractors are required to notify the Metro Insurance Administrators (MIA) of the award of any subcontract of whatever tier for the performance of operations at construction site. The notices to MIA should be made on



Prime Contractor's letterhead, numbered consecutively, follow the form and contain the information as outlined below:

### LETTERHEAD OF PRIME CONTRACTOR

Metro Insurance Administrators  
955 N. L'Enfant Plaza, Suite 6077  
Washington, D.C. 20024

Re: WMATA Prime Contract No. \_\_\_\_\_  
Letter Number \_\_\_\_\_  
Notice of Contract Award and  
Request for Insurance

Gentlemen:

A contract has been awarded to the contractor named below:

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS OF CONTRACTOR: \_\_\_\_\_

TYPE OF WORK: \_\_\_\_\_

REPRESENTATIVE: \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

DATE OF CONTRACT: \_\_\_\_\_

ESTIMATED CONTRACT AMOUNT: \_\_\_\_\_

PROBABLE STARTING DATE: \_\_\_\_\_

Please send Certificates of Insurance or policies evidencing coverage to the above named contractor.

**PRIME CONTRACTOR**

By \_\_\_\_\_

not include those provisions of any such law which provide non-occupational disability benefits.

(b) State. The word "state" means any State or Territory of the United States of America and the District of Columbia.

(c) Bodily Injury by Accident; Bodily Injury by Disease. The contraction of disease is not an accident within the meaning of the word "accident" in the term "bodily injury by accident" and only such disease as results directly from a bodily injury by accident is included within the term "bodily injury by accident." The term "bodily injury by disease" includes only such disease as is not included within the term "bodily injury by accident."

(d) Assault and Battery. Under coverage B, assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

#### IV. Application of Policy

This policy applies only to injury (1) by accident occurring during the policy period, or (2) by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period.

#### EXCLUSIONS

This policy does not apply:

(a) under coverages A and B, to operations conducted at or from any workplace not described in Item 1 or 4 of the declarations if the insured has, under the workmen's compensation law, other insurance for such operations or is a qualified self-insurer therefor;

(b) under coverages A and B, unless required by law or described in the declarations, to domestic employment or to farm or agricultural employment;

(c) under coverage B, to liability assumed by the insured under any contract or agreement, but this exclusion does not apply to warranty that work performed by or on behalf of the insured will be done in a workmanlike manner;

(d) under coverage B, (1) to punitive or exemplary damages on account of bodily injury to or death of any employee employed in violation of law, or (2) with respect to any employee employed in violation of law with the knowledge or acquiescence of the insured or any executive officer thereof;

(e) under coverage B, to bodily injury by disease unless prior to thirty-six months after the end of the policy period written claim is made or suit is brought against the insured for damages because of such injury or death resulting therefrom;

(f) under coverage B, to any obligation for which the insured or any carrier as his insurer may be held liable under the workmen's compensation or occupational disease law of a state designated in Item 3 of the declarations, any other workmen's compensation or occupational disease law, any unemployment compensation or disability benefits law, or under any similar law.

## CONDITIONS

(Unless otherwise noted, conditions apply to all Coverages.)

1. Premium. The premium bases and rates for the classifications of operations described in the declarations are as stated therein and for classifications not so described are those applicable in accordance with the manuals in use by the company. This policy is issued by the company and accepted by the insured with the agreement that if any change in classifications, rates or rating plans is or be-

comes applicable to this policy under any law regulating this insurance or because of any amendments affecting the benefits provided by the workmen's compensation law, such change with the effective date thereof shall be stated in an endorsement issued to form a part of this policy.

When used as a premium basis, "remuneration" means the entire remuneration, computed in accordance with the manuals in use by the company, earned during the policy period by (a) all executive officers and other employees of the insured engaged in operations covered by this policy, and (b) any other person performing work which may render the company liable under this policy for injury to or death of such person in accordance with the workmen's compensation law. "Remuneration" shall not include the remuneration of any person within division (b) foregoing if the insured maintains evidence satisfactory to the company that the payment of compensation and other benefits under such law to such person is secured by other valid and collectible insurance or by any other undertaking approved by the governmental agency having jurisdiction thereof.

If the declarations provide for adjustment of premium on other than an annual basis, the insured shall pay the deposit premium to the company upon the inception of this policy and thereafter interim premiums shall be computed in accordance with the manuals in use by the company and paid by the insured promptly after the end of each interval specified in the declarations. The deposit premium shall be retained by the company until termination of this policy and credited to the final premium adjustment.

The insured shall maintain records of the information necessary for premium computation on the bases stated in the declarations, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct. If the insured does not furnish records of the remunera-

tion of persons within division (b) of the definition of remuneration foregoing, the remuneration of such persons shall be computed in accordance with the manuals in use by the company.

The premium stated in the declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the rules, rates, rating plans, premiums and minimum premiums applicable to this insurance in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the premium previously paid, the insured shall pay the excess to the company; if less, the company shall return to the insured the unearned portion paid by the insured. All premiums shall be fully earned whether any workmen's compensation law, or any part thereof, is or shall be declared invalid or unconstitutional.

2. Long Term Policy. If this policy is written for a period longer than one year, all the provisions of this policy shall apply separately to each consecutive twelve months period, or, if the first or last consecutive period is less than twelve months, to such period of less than twelve months, in the same manner as if a separate policy had been written for each consecutive period. The earned premium for each such period shall be computed as provided by Condition 1 of this policy, subject, except as otherwise provided in the manuals in use by the company with respect to classifications of operations for which this policy provides a per capita premium basis, to the following provisions:

(a) The premium rates for the first consecutive period shall be those stated in the declarations and those applicable for such period in accordance with the manuals in use by the company;

(b) The premium bases, classifications of operations, rates, rating plans, premiums and minimum premiums for each such subsequent period shall be those applicable

for such period in accordance with the manuals in use by the company.

3. Partnership or Joint Venture as Insured. If the insured is a partnership or joint venture, such insurance as is afforded by this policy applies to each partner or member thereof as an insured only while he is acting within the scope of his duties as such partner or member.

4. Inspection and Audit. The company and any rating authority having jurisdiction by law shall each be permitted but not obligated to inspect at any reasonable time the workplaces, operations, machinery and equipment covered by this policy. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the insured or others, to determine or warrant that such workplaces, operations, machinery or equipment are safe.

The company and any rating authority having jurisdiction by law shall each be permitted to examine and audit the insured's payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records of any and every kind at any reasonable time during the policy period and any extension thereof and within three years after termination of this policy, as far as they show or tend to show or verify the amount of remuneration or other premium basis, or relate to the subject matter of this insurance.

5. Notice of Injury. When an injury occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the insured and of available witnesses.

6. Notice of Claim or Suit. If claim is made or suit or other proceeding is brought against the insured, the in-

sured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

7. Assistance and Cooperation of the Insured. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are required by the workmen's compensation law.

8. Statutory Provisions, Coverage A. The company shall be directly and primarily liable to any person entitled to the benefits of the workmen's compensation law under this policy. The obligations of the company may be enforced by such person, or for his benefit by any agency authorized by law, whether against the company alone or jointly with the insured. Bankruptcy or insolvency of the insured or of the insured's estate, or any default of the insured, shall not relieve the company of any of its obligations under coverage A.

As between the employee and the company, notice or knowledge of the injury on the part of the insured shall be notice or knowledge, as the case may be, on the part of the company; the jurisdiction of the insured, for the purposes of the workmen's compensation law, shall be jurisdiction of the company and the company shall in all things be bound by and subject to the findings, judgments, awards, decree, orders or decisions rendered against the insured in the form and manner provided by such law and within the terms, limitations and provisions of this policy not inconsistent with such law.

All of the provisions of the workmen's compensation law shall be and remain a part of this policy as fully and



completely as if written herein, so far as they apply to compensation and other benefits provided by this policy and to special taxes, payments into security or other special funds, and assessments required of or levied against compensation insurance carriers under such law.

The insured shall reimburse the company for any payments required of the company under the workmen's compensation law, in excess of the benefits regularly provided by such law, solely because of injury to (a) any employee by reason of the serious and wilful misconduct of the insured, or (b) any employee employed by the insured in violation of law with the knowledge or acquiescence of the insured or any executive officer thereof.

Nothing herein shall relieve the insured of the obligations imposed upon the insured by the other terms of this policy.

9. Limits of Liability, Coverage B. The words "damages because of bodily injury by accident or disease, including death at any time resulting therefrom," in coverage B include damages for care and loss of services and damages for which the insured is liable by reason of suits or claims brought against the insured by others to recover the damages obtained from such others because of such bodily injury sustained by employees of the insured arising out of and in the course of their employment. The limit of liability stated in the declarations for coverage B is the total limit of the company's liability for all damages because of bodily injury by accident, including death at any time resulting therefrom, sustained by one or more employees in any one accident. The limit of liability stated in the declarations for coverage B is the total limit of the company's liability for all damages because of bodily injury by disease, including death at any time resulting therefrom, sustained by one or more employees of the insured in operations in any one state designated in Item 3 of the declarations or in operations necessary or incidental thereto.

The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

10. Action Against Company, Coverage B. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations under coverage B.

11. Other Insurance. If the insured has other insurance against a loss covered by this policy, the company shall not be liable to the insured hereunder for a greater proportion of such loss than the amount which would have been payable under this policy, had no such other insurance existed, bears to the sum of said amount and the amounts which would have been payable under each other policy applicable to such loss, had each such policy been the only policy so applicable.

12. Subrogation. In the event of any payment under this policy, the company shall be subrogated to all rights of recovery therefor of the insured and any person entitled to the benefits of this policy against any person or organization, and the insured shall execute and deliver instruments and papers and do whatever else is necessary to

secure such rights. The insured shall do nothing after loss to prejudice such rights.

13. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

14. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon. If, however, during the policy period the insured shall die, and written notice is given to the company within thirty days after the date of such death, this policy shall cover the insured's legal representative as insured; provided that notice of cancelation addressed to the insured named in the declarations and mailed or delivered, after such death, to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

15. Cancelation. This policy may be canceled by the insured by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the insured or by the company shall be equivalent to mailing.

If the insured cancels, unless the manuals in use by the company otherwise provide, earned premium shall be (1) computed in accordance with the customary short rate table and procedure and (2) not less than the mini-

mum premium stated in the declarations. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the insured.

When the insurance under the workmen's compensation law may not be canceled except in accordance with such law, this condition so far as it applies to the insurance under this policy with respect to such law, is amended to conform to such law.

16. Terms of Policy Conformed to Statute, Coverage A. Terms of this policy which are in conflict with the provisions of the workmen's compensation law are hereby amended to conform to such law.

17. Declarations. By acceptance of this policy the insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

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As respects the company previously designated, the following correlative provision forms a part of this policy:

**Mutual Policy Conditions**

**Lumbermens Mutual Casualty Company**

**American Manufacturers Mutual Insurance Company**

**Federal Mutual Insurance Company**

This is a perpetual mutual corporation owned by and operated for the benefit of its members. This is a non-

assessable, participating policy under which the Board of Directors in its discretion may determine and pay unabsorbed premium deposit refunds (dividends) to the insured.

As respects the State of Texas, such provision is amended to read as follows:

**Mutuals—Membership and Voting Notice.** The insured is notified that by virtue of this policy he is a member of the company so designated, and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meetings are held in its Home Office at the place and time stated on the front cover.

**Mutuals—Participation Clause Without Contingent Liability. No Contingent Liability:** This policy is non-assessable. The policyholder is a member of such company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with the provisions of law, in the distribution of dividends so fixed and determined.

**Dividends.**

#### **American Motorists Insurance Company**

This policy is participating and shall be entitled to receive unabsorbed premium deposit refunds as apportioned by the directors.

As respects the State of Texas, such provision is amended to read as follows:

**Dividend Provision—Participating Companies.** The named insured shall be entitled to participate in a distribution of the surplus of the company, as determined by its Board of Directors from time to time, after approval in accordance with the provisions of the Texas Insurance Code, of 1951, as amended.

As respects  
Conditions  
by the follow

Participating  
the earning  
cumulated  
pensation p  
determined  
accordance  
riod to whic  
dividend sh  
has complie  
the payment

IN WITN  
the Declarat  
by its Presi  
be valid unl  
a duly auth

Lumber  
America  
America  
Federal

/s/ Clifford

/s/ James B

WAIVER OF RIGHT OF SUBROGATION

It is agreed that the company waives any right of subrogation against:

- (a) The United States of America
- (b) The District of Columbia
- (c) The State of Maryland
- (d) The Commonwealth of Virginia
- (e) Bechtel Associates, Bechtel Incorporated, Bechtel Associates Professional Corporation (D.C.), & Bechtel Associates Professional Corporation (Va.)

which might arise by reason of any payment made under this policy.

(This Endorsement cancels and replaces Endorsement No. 2A)

Effective Date: Unless an effective date is stated below, this endorsement shall be effective as of the beginning of the policy period stated in the declaration of the policy.

This endorsement shall form a part of the policy to which it is attached.

STANDARD FIDELITY  
CARRIAGE COMPANY

AMERICAN FIDELITY  
INSURANCE COMPANY

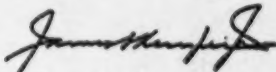
AMERICAN MANUFACTURING  
FIDELITY INSURANCE COMPANY

FEDERAL FIDELITY  
INSURANCE COMPANY

POLICY NUMBER	ENDORSEMENT EFFECTIVE
ICL 751 451	Month 6 Day 7 Year 73

Endorsement No. 2B

Completion necessary only for policies where issued subsequent to policy preparation.





## Workmen's Compensation and Employers' Liability Policy

## ALL STATES ENDORSEMENT

A. In the event the insured undertakes operations in any state not designated in Item 3 of the declaration, other than Nevada, North Dakota, Ohio, Washington, West Virginia or Wyoming the company agrees as follows:

1. To reimburse the insured for all compensation and other benefits required of the insured under the workmen's compensation or occupational disease law of such state.
2. Such insurance as is afforded by the policy under coverage 8 also applies to bodily injury by accident or disease, including death at any time resulting therefrom, sustained by any employee of the insured arising out of and in the course of his employment in operations in such state or in operations necessary or incidental thereto.
3. Such insurance as is afforded by the policy by virtue of this endorsement does not apply to such operations if the insured has, under any workmen's compensation or occupational disease law, other insurance for such operations or is a qualified self-insurer therefor, or has affirmatively rejected the workmen's compensation or occupational disease law applicable to such operations.

B. The agreements in paragraph A foregoing are subject to the following conditions:

1. The insured shall give notice to the company before or within a reasonable time after the commencement of such operations, but failure to give such notice shall not invalidate the insurance afforded by this endorsement.
2. The insured shall, if requested by the company, take whatever action is necessary to bring himself within the workmen's compensation and occupational disease laws of such state with respect to such operations. The company shall thereupon issue, in the form required by such laws, and the insured shall accept, workmen's compensation coverage under such laws, and such insurance as is afforded by this endorsement with respect to such operations shall thereupon terminate.
3. The premium basis and rates for the classifications of operations in such state or operations necessary or incidental thereto shall be those which would have been applicable under the manuals in use by the company had coverage A of the policy applied to such operations and the premium for the insurance afforded by this endorsement shall be computed accordingly, subject to the provisions of Condition 1 of the policy.
4. The word "State" as used in this endorsement means any State of the United States of America and the District of Columbia.

C. Such insurance as is afforded by the policy by virtue of this endorsement shall not apply:

1. To injury to or death of the master or a member of the crew of any vessel; or
2. To fines or penalties imposed on the insured for failure to comply with the requirements of any workmen's compensation law.

D. The insurance afforded by the policy by virtue of this endorsement shall not constitute workmen's compensation insurance as required of any employer under the laws of any state.

E. All of the provisions of the policy, except coverage A of Insuring Agreement 1 and Conditions 8 and 14, insofar as such provisions are not inconsistent herewith, are applicable to the insurance afforded by the policy by virtue of this endorsement.

The effective date and hour of this endorsement is stated below and reference to hour shall be Standard Time at the address of the named insured as stated in the policy. This endorsement shall terminate with the policy.

This endorsement is subject to the declarations, conditions, exclusions and other terms of the policy which are not inconsistent herewith, and when countersigned by an authorized representative of the company forms a part of the policy described below.

## LUMBERMEN'S MUTUAL CASUALTY COMPANY

Company

ISSUED TO Washington Metropolitan Area Transit Authority				POLICY EFFECTIVE DATE 7 30 71		PRODUCER'S NUMBER 01-667A
POLICY NUMBER ICL 751 451	NAME CODE WMATA	ENDORSEMENT NO. 3	ENDORSEMENT EFFECTIVE DATE 12-01 AM 7	MONTH 30	YEAR 71	DECLARATION OF ASSIGNMENT NUMBER
COUNTERSIGNED AT Washington, D. C.			ENDORSEMENT DATE		MONTH	YEAR

## Workmen's Compensation and Employers' Liability Policy

UNITED STATES LONGSHOREMEN'S AND HARBOR WORKERS'  
COMPENSATION ACT ENDORSEMENT

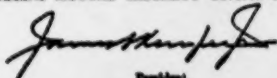
It is agreed that:

1. With respect to operations in a state designated in Item 3 of the declarations, the unqualified term "workmen's compensation law" includes the United States Longshoremen's and Harbor Workers' Compensation Act, U. S. Code (1946) Title 33, Sections 901-49, and Definition (a) of Insuring Agreement III is amended accordingly.
2. With respect to operations subject to the said Longshoremen's and Harbor Workers' Compensation Act, the states, if any, named below, shall be deemed to be designated in Item 3 of the declarations.

ALL STATES NOT DESIGNATED IN ITEM 3 OF THE DECLARATIONS

The effective date and hour of this endorsement is stated below and reference to hour shall be Standard Time at the address of the named insured as stated in the policy. This endorsement shall terminate with the policy.

LUMBERMEN'S MUTUAL CASUALTY COMPANY



President.

ISSUED TO Washington Metropolitan Area Transit Authority		POLICY EFFECTIVE MONTH DAY YEAR 7 30 71		PRODUCER'S NUMBER 02-4674
POLICY NUMBER ICL 751 491	ENDORSEMENT NUMBER 4	ENDORSEMENT EFFECTIVE DATE MONTH DAY YEAR 12:01 A.M. 7 30 71		SIGNATURE OF LICENSED RESIDENT AGENT
COUNTERSIGNED AT Washington, D. C.		COUNTERSIGNATURE DATE MONTH DAY YEAR		

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**

**COORDINATED SAFETY PROGRAM  
& REPORTING PROCEDURES**

[Attached as Exhibit #2 to the Plaintiff's Motion for  
Relief Under Rule 60 (b) (3) filed on October 27, 1982  
in *Johnson v. Bechtel Associates Professional Corp.*,  
*D.C., et al.*, C.A. No. 81-0963]

**WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY**  
600 Fifth Street N.W., Washington D.C. 20001  
(202) 637-1204

**COORDINATED SAFETY PROGRAM**

The prevention of accidents in the course of completing the Metro System is of primary importance to everyone connected with WMATA. Accidents cause suffering and hardship to those immediately involved and result in job delay and additional expense to the contractors.

A low accident rate is not the result of pure luck, but is the direct result of a carefully planned safety program conscientiously carried forward by management and supervision. Positive action must be taken to prevent accidents and for that purpose this safety program has been established.

This manual contains the procedures necessary to the implementation of the Coordinated Safety Program for all Metro construction, and will be used by all personnel as prescribed herein. It in no way releases the contractor from the responsibilities and conditions contained in his contract with the Authority.

The Contractor is responsible for the safety and welfare of his employees and for the protection of property and the general public within his scope of work. The Contractor is responsible for compliance with all federal, state, local and WMATA safety regulations which are applicable to his project.

The National Loss Control Service Corporation (NATLSCO), on behalf of WMATA, will be in the field to assist in promoting effective safety attitudes among all contractor personnel.

**General Manager**

## DEFINITIONS

- Washington Metropolitan Area Transit Authority—(WMATA)**
- Contracting Officer (CO)** —Authorized representative of WMATA for administering contracts related to the construction of Metro.
- General Engineering Consultant (GEC)** —Principal engineering consultant to WMATA, coordinating section designers.
- General Construction Consultant (GCC)** —Principal construction consultant to WMATA, managing construction.
- Section Designer (SXD)** —Consulting firm immediately responsible for the design and, in some instances, construction inspection of a specific section of Metro.
- Resident Engineer (RE)** —Authorized representative of the Contracting Officer to supervise administration of a contract. The Resident Engineer is also a representative of the SXD, GEC or GCC as appropriate.
- Metro Insurance Administrators (MIA)** —Authorized representative of WMATA for administering the Coordinated Insurance Program and Coordinated Safety Program.
- National Loss Control Service Corporation (NATLSCO)** —WMATA's representative for all field safety and loss control activities. NATLSCO also services claims under the Coordinated Insurance Program.
- Coordinated Safety Committee (CSC)** —A committee designated by WMATA for the purpose of coordinating the efforts of WMATA safety representatives. It is composed of MIA's Safety Coordinator (Chairman) NATLSCO's Resident Loss Control Service Manager, GCC Safety Superintendent and a representative of WMATA's Office of Construction.
- Insurance Carrier** —Coordinated Insurance Program for compensation and general liability—Lumbermens Mutual Insurance Co. Coordinated Insurance Program for property—American Home (A.I.G.)
- OR
- Insurance carrier(s) retained directly by the contractor (Phase I only).

**SAFETY RESPONSIBILITIES**

- A. PRIME CONTRACTOR**
- B. CONTRACTOR'S PROJECT MANAGER**
- C. CONTRACTOR'S SAFETY SUPERINTENDENT**
- D. SUBCONTRACTOR'S JOB SUPERINTENDENT**
- E. JOB FOREMEN**
- F. RESIDENT ENGINEERS**
- G. NATIONAL LOSS CONTROL SERVICE CORPORATION**
- H. METRO INSURANCE ADMINISTRATORS**
- I. SAFETY ENGINEER (WMATA)**
- J. BECHTEL PROJECT SAFETY SUPERVISOR**

## PRIME CONTRACTOR

The Contractor must take the initiative in accident prevention. His responsibility cannot be delegated to sub-contractors, suppliers or other persons. The Safety Superintendent is appointed to perform safety inspection services under the direction of the Contractor's Project Manager. It is recognized many potential hazards will be promptly corrected by mutually accepted means of informal communication between the Safety Superintendent and the Resident Engineer. However, it must be understood that formal communication concerning accident prevention is to be maintained between the Contractor's Project Manager, Resident Engineer and the WMATA Office of Construction and NATLSCO in order to preclude any misunderstanding.

The Prime Contractor is responsible for all of the requirements for Accident Prevention (Article 1.36—General Provisions) and Safety Requirements Article 215—Special Provisions) contained in his contract with the Authority. Upon compliance with certain of these provisions, the Contractor will:

1. Upon notification of a contract award, submit a letter of management statement of policy signed by an officer of the company in relation the following:
  - A. His company's safety policy based upon compliance with WMATA's Coordinated Safety Program.
  - B. His company's awareness and knowledge of all local, state and federal safety codes applicable to his contracts with WMATA.
2. Submit a resume of the work experience and qualifications of his safety superintendent as required by his contract with WMATA.
  - A. This resume shall be directed to and will be reviewed by the WMATA Coordinated Safety Committee (letter to be mailed to MIA offices).



- B. This individual may be required to appear for a personal interview by the WMATA Coordinated Safety Committee if additional information is needed.
- 3. Maintain an orientation program for new employees which includes a presentation:
  - A. Hazards present in his work assignment and the general area in which he works.
  - B. Personal protective equipment he must use.
  - C. Method of reporting any unsafe conditions the worker may encounter.
- 4. The Contractor shall furnish copies of all warnings and/or citations of safety violations received from any jurisdictional, state or federal agency. Copies shall be sent within 48 hours to the RE, NATLSCO or MIA offices.

#### CONTRACTOR'S PROJECT MANAGER

- 1. Be responsible for the supervision of the Safety Superintendent in carrying out the duties and responsibilities of his position.
- 2. Plan and execute all work so as to comply with the stated objectives of the Coordinated Safety Program.
- 3. Comply with all of the provisions of the contract dealing with safety and accident prevention requirements.
- 4. Comply with federal, state and local safety codes and regulations.
- 5. Cooperate with NATLSCO safety representatives.
- 6. Authorize necessary immediate action to correct sub-standard safety conditions existent, reported or observed.

7. Review and take necessary immediate action on safety records through directives or personal interviews with superintendents, job foremen or subcontractors' management.
8. Attend safety meetings as required by the Contracting Officer.

#### CONTRACTOR'S SAFETY SUPERINTENDENT

1. Make daily safety inspections of job sites and take necessary immediate corrective action to eliminate unsafe acts and/or conditions. Record observations on WMATA Form C-21 in compliance with reporting procedures.
2. Review accidents and recommend immediate corrective action.
3. Provide job foremen with appropriate material for use by job foremen in conducting weekly "tool box" safety meetings.
4. Review safety meetings reports submitted by job foremen and take necessary action to see that required weekly safety meetings are held by the job foremen.
5. Periodically attend foremen "tool box" safety meetings and evaluate effectiveness.
6. Assist in the preparation of all accident investigation and reporting procedures.
7. Implement training programs for supervisors and employees as they apply to their specific responsibilities.
8. Encourage programs for recognition of individual employee's safety efforts and their contribution toward improved work methods.
9. Be responsible for the control of and availability of the necessary safety equipment, including employee personal protective equipment.

10. Coordinate his activities with those of NATLSCO's safety representatives and take necessary steps to immediately implement their appropriate recommendations.
11. Coordinate public relations aspects of the Contractor's safety program.
12. Attend safety meetings held by the Authority. The Safety Superintendent should share his experience, questions and problems with other superintendents at these meetings.

#### SUBCONTRACTOR'S JOB SUPERINTENDENT

1. Plan and execute all work so as to comply with stated objectives of the WMATA Safety Program.
2. Recognize and implement the safety and loss control requirements contained in the General Conditions entitled "Protection Against Accidents" in the subcontractor's construction agreement.
3. Provide and enforce the use at all times of the personal protective equipment required by WMATA, local, state and federal regulations.
4. Complete supervisory investigation report on all accidents (Reference Supervisor's Report Form C-24).
5. Attend supervisory personnel safety meetings scheduled by Prime Contractor's Project Manager.
6. Schedule weekly "tool box" safety meetings to be held by job foremen for all employees.
7. Periodically attend foremen's weekly "tool box" safety meetings to evaluate effectiveness and offer suggestions for improvement.
8. Take immediate action to correct unsafe practices or conditions when discovered.

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- 1) *Job site material flow surveys* to identify and focus on critical material handling accident hazards.
- 2) *Job site traffic flow surveys* to analyse possible hazard producing interactions of personnel and vehicular equipment.
- 3) *Job layout safety surveys* in order to preplan safety strategies so as to minimize hazard producing situations of men, equipment and materials.

F. Discuss problems relating to safety with the Safety Superintendent, Resident Engineer, Prime Contractor's Project Manager.

G. Supply safety posters, accident prevention signs and other literature.

Reports of all on-site inspections will be furnished in duplicate to the Project Manager with copies to RE and MIA. The frequency of these surveys will be determined by the nature of the work in progress, accident trends and unusual conditions which may arise.

3. NATLSCO will also utilize, on an as-needed basis, their Industrial Hygiene Staff of their Environmental Sciences Service Division to evaluate any potentially serious occupational disease exposures that may exist on job sites in the various projects. The results of such surveys will be made in report form by the Industrial Hygienist. Copies of this report shall be made available to the RE, WMATA Office of Construction, and MIA office.
4. Occupational Health Consultants will be made available to convey periodic evaluations of the first aid and medical facilities provided at various major job sites. They will also provide assistance to any on-site nursing personnel on these projects.

## METRO INSURANCE ADMINISTRATORS

Metro Insurance Administrators, as an authorized representative of WMATA, will coordinate the WMATA Safety Program. MIA will:

1. Develop the WMATA Safety Program & Reporting Procedures Manual, constantly monitor the WMATA Safety Program and institute procedural changes as required.
2. Prepare for WMATA a monthly statistical report of accidents and injuries incurred on all Metro construction projects.
3. Conduct weekly safety meetings of the Coordinated Safety Committee. The Committee will consist of safety representatives of GCC, NATLSCO, WMATA and MIA, chairman. Report findings of Committee to WMATA.
4. Be co-chairman with a representative of WMATA Design and Construction in conducting meetings with prime contractors, safety superintendents and/or resident engineers and WMATA construction engineers.
5. Bring to the attention of WMATA those safety problems which cannot be resolved at a lower level.
6. Coordinate and direct the efforts of the NATLSCO Loss Control Program.
7. Coordinate the property loss control efforts of representatives of the American Home (A.I.G.).
8. Coordinate the WMATA preconstruction survey activities (Prime contractors may contact their RE for review of surveys).
9. Meet with local, state and/or federal safety officials in order to keep better informed on safety regulations.

**SAFETY ENGINEER (WMATA)**

1. Monitor and evaluate the effectiveness of the Bechtel Resident Engineers in enforcing the provisions of the Coordinated Safety Program and provide assistance where needed.
2. Evaluate and direct the activities of the Bechtel Safety Dept.
3. Participate as a member of the Contractor Evaluation Board.
4. Serve as the Authority's representative on the Coordinated Safety Committee.
5. Serve as co-chairman of the monthly safety meeting for Safety Superintendents and Resident Engineers.
6. Serve as chairman of the WMATA Ad Hoc Committee to investigate serious liability and/or compensation accidents and report findings to the Chief of Design and Construction.
7. Meet with contractor and union representatives regarding matters of safety and serve as member of the Safety Advisory Committee.
8. Act as liaison between WMATA, federal and municipal authorities on matters relating to construction safety.
9. Work with WMATA rail operations to develop and coordinate safe work procedures where rail and construction operations are integrated.
10. Assist the Office of Design and Construction with all matters of construction safety.
11. Serve as WMATA's representative at Insurance and Safety meetings.
12. Provide special assistance to contractors with unusual or complicated safety problems.



13. Assist with the writing of contract specifications on matters relating to safety.
14. Assist Community Services in public relations work regarding safety.

### **BECHTEL PROJECT SAFETY SUPERVISOR**

The Bechtel Project Safety Supervisor, as an authorized representative of WMATA, will:

1. Provide safety services to the Bechtel Construction Manager and the Resident Engineers to ensure compliance with the provisions of the WMATA Coordinated Safety Program and Reporting Procedures, applicable safety codes and the contractual obligations of the Authority's contractors.
2. Direct the contractors, through the Resident Engineers, to correct any unsafe condition(s) observed and/or brought to the attention of the project safety supervisor.
3. In the event of non-compliance by a contractor to correct unsafe condition(s), recommend to the Resident Engineer that the work be stopped until condition(s) is corrected.
4. Provide safety services that are coordinated with the Authority's safety representatives and the insurance consultants to develop and maintain a uniform system of safety procedures and reporting requirements which will be applicable to all construction contracts.

### **GENERAL SAFETY REQUIREMENTS**

#### **LOCAL LAWS AND REGULATIONS**

The Contractor shall comply with all local, state and federal laws, rules, statutes and regulations of governing or regulatory bodies within the geographical scope of his area of operations.

## **WMATA REQUIREMENTS**

In addition to compliance with all applicable local, state and federal rules and regulations, the Contractor will be required to comply with special WMATA safety requirements as contained in this manual. In all cases, safety laws, regulations, requirements and safety standards shown as an appendix in this section shall be considered minimum standards of compliance.

## **EMERGENCY PROCEDURES GUIDELINES**

The Prime Contractor will set up emergency procedures for the following categories:

- A. Fire
- B. Injury to employee
- C. Injury to general public resulting from a possible slip, fall or vehicular injury
- D. Property damage, particularly to utilities; i.e., gas, water, sewage, electrical, telephone or pedestrian and vehicle routes
- E. Public demonstrations
- F. Bomb threats
- G. Other exposures at Contractor's job site

Emergencies must be handled by the ranking man present, with whoever is available to help.

Actions to be taken during emergencies should be discussed regularly with Contractor's supervisory personnel and at "tool box" safety meetings.

Wherever practical, teams should be established to handle the various types of emergencies.

At least two men qualified in first aid should be working on each shift. The Safety Superintendent should contact his NATLSCO representative if additional training is needed to meet this objective.

When an emergency develops the personnel in charge should:

1. Secure the area tightly and quickly.
2. Give information regarding the situation only to authorized representatives of WMATA or the government. Questions from the media should be referred to WMATA Office of Community Services for reply (See Public Relations under Contacts section of this manual).

In order that necessary emergency services are supplied promptly each contractor should:

1. Post, in a conspicuous place, list of emergency phone numbers, along with the type of information to be transmitted for each emergency situation.
2. Delegate responsibility for making emergency calls. The ranking man present should generally be responsible for this duty.

The Contractor's Emergency Procedures should be reviewed regularly and, where necessary, adjusted to provide maximum effectiveness. All such procedures should be approved by and coordinated with the Resident Engineer.

On occasion a serious accident emergency situation may occur which should be reported without delay to a representative of the Authority. Each case is a matter of judgement by the Resident Engineer, or in his absence, by the Job Superintendent. For reporting critical situations the following telephone number should be used at all times, including nights, weekends and holidays.

## ***SAFETY GUIDELINES—METRO TOURS***

It is of the utmost importance that a high degree of protection be afforded all persons touring Metro construction sites. The following guidelines have been prepared as general instructions for those personnel who are responsible for the organization, direction and safe conduct of these tours.

### ***GENERAL REQUIREMENTS***

Except for certain technical inspection tours made by WMATA Staff members and their guests the following procedures shall be implemented:

1. All group tours will be cleared through the WMATA Office of Community Services, allowing maximum advance notice.
2. Community Services will contact the Resident Engineer at the sites to be visited to coordinate the tour plan and to assure that necessary safety precautions are taken.
3. Community Services will coordinate the following items with the person requesting the tour:
  - A. Number of Visitors—Individual tour groups in non-hazardous areas should be limited to no more than 20 persons per tour guide; i.e. group of 40 will require at least two guides.
  - B. Clothing—Women will be requested to wear slacks and low-heeled shoes.
  - C. Children—Children under age 12 will not be permitted to accompany tours. Each child age 12-15 must be accompanied by an adult.
  - D. Protective Equipment—Hard hats, boots, raincoats, ear plugs, etc. will be supplied as required.

E. Release and Hold Harmless Agreement—  
Each visitor will be required to execute this form prior to the inception of the tour.

4. Immediately prior to entering a job site, all visitors should be briefed about the need for careful and orderly conduct, including mention of any special hazards they may encounter.
5. Large groups should be accompanied at all times by a member of the Resident Engineer's staff while on the job site.

### TECHNICAL INSPECTION TOURS

WMATA staff members, who are escorting technical and/or other official visitors in often more hazardous work areas, will comply with the safety precautions noted above. It is recommended that the number of people on such tours be proportionate to the degree of hazard involved.

### AD HOC COMMITTEE

At the discretion of the Contracting Officer, an ad hoc committee may be appointed to evaluate all available reports and information obtained from investigative sources on any accidents resulting in a loss of life or injury to 5 or more persons. The ad hoc committee shall submit a written report to the Contracting Officer.

### PROTECTION OF THE PUBLIC

The Contractor shall take all necessary precautions to prevent injury to the public or damage to property of others. For the purposes of this manual, the public shall include all persons not employed by the Contractor or a subcontractor working under his direction. Precautions to be taken shall include but not be limited to the following:

1. Work shall not be performed in any area occupied by the public unless specifically permitted by the contract or in writing by the Contracting Officer.
2. When it is necessary to maintain public use of work areas involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways and vehicular roadways, the Contractor shall protect the public with appropriate guardrails, barricades, temporary fences, overhead protection, temporary partitions, shields and adequate visibility. Such protection shall guard against harmful radioactive rays or particles, flying materials, falling or moving materials and equipment, hot or poisonous materials, explosives and explosive atmospheres, flammable or toxic liquids and gases, open flames, energized electric circuits or other harmful exposures.
3. Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors or exits shall be kept clear of obstructions to permit safe ingress and egress of the public at all times.
4. Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a signalman shall control the moving of motorized equipment in areas where the public might be endangered.
5. Sidewalk sheds, canopies, catch platforms and appropriate fences shall be provided when it is necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural alteration of outside walls on any structure. The protection required shall be in accordance with the laws and regulations of the District of Columbia or other political subdivision involved.

6. A temporary fence shall be provided around the perimeter of above-ground operations adjacent to public areas except where a sidewalk, shed or fence is provided by the contract or as required by subparagraph 5 above. Perimeter fences shall be at least six (6) feet high. They may be constructed of wood or metal frame and sheathing, wire mesh or a combination of both as provided in contract specification. When the fence is adjacent to a sidewalk near a street intersection at least the upper section of fence shall be open wire mesh from a point not over four (4) feet above the sidewalk and extending at twenty-five (25) feet in both directions from the corner of the fence or as otherwise required by local jurisdiction involved.
7. Guardrails shall be provided on both sides of vehicular and pedestrian bridges, ramps, runways and platforms. Pedestrian walkways elevated above adjoining surfaces, or walkways within six (6) feet of the top of excavated slopes or vertical banks shall be protected with guardrails, except where sidewalk sheds or fences are provided as required by subparagraph 5 above. Guardrails shall be made of rigid materials capable of withstanding a force of at least two hundred (200) pounds applied in any direction at any point in their structure. Their height shall be approximately (42) inches. Top rails and posts may be two (2) inches by four (4) inches dressed wood or equal. Intermediate horizontal rails at mid-height and toe boards at platform level may be one (1) inch by six (6) inch wood or equal. Posts shall not be over eight (8) feet apart.
8. Barricades meeting the requirements of the political subdivision involved shall be provided



where sidewalk shed, fences or guardrails as referenced above are not required between work areas and pedestrian walkways, roadways or occupied buildings. Barricades shall be secured against accidental displacement and shall be maintained in place except where temporary removal is necessary to perform the work. During the period a barricade is removed temporarily for the purpose of work, a watchman shall be placed at all openings.

9. Temporary sidewalks shall be provided when a permanent sidewalk is obstructed by the Contractor's operations. They shall be in accordance with the requirements of the political subdivision involved. Guardrails shall be provided on both sides of temporary sidewalks.
10. Warning signs and lights, including lanterns, torches, flares and electric lights, meeting requirements of the political subdivision involved, shall be maintained from dusk to sunrise along guardrails, barricades, temporary sidewalks and at every obstruction to the public. They shall be placed at both ends of such protection or obstructions and not over twenty (20) feet apart alongside of such protection or obstructions.
11. Fuel-burning types of lanterns, torches, flares or other open flame devices are prohibited within twenty (20) feet of open utility man-holes.

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E. NATLSCO's loss control consultants on subsequent visits will verify compliance with previously submitted recommendations. If compliance has not been obtained, they shall meet with the RE, Contractor's Safety Superintendent and Project Manager and develop a solution to the problem. If, in the event compliance cannot be obtained, immediate notification shall be given to MIA, Bechtel's Safety Supervisor and WMATA's Construction Safety Engineer.

5. *Bechtel Safety Representatives*

This form shall be used by Bechtel's safety representatives performing safety inspection services on all projects. The Bechtel representatives shall prepare this form, noting all unsafe acts or conditions observed during their field inspection.

The Bechtel representatives shall discuss their findings with the Contractor and RE. Copies of their recommendations shall be left with the Contractor and the RE with abatement dates established.

The Contractor shall fill in "Action Taken" column and return a copy of the report to the RE's office for transmittal to the Bechtel Safety Supervisor. The RE shall follow up on action taken by the contractor and verify compliance by so noting in "Action Taken" column of the report. He shall then transmit a copy of his report to the Bechtel Safety Supervisor.

The Bechtel Safety Supervisor shall be responsible for supplying copies of all of these reports to MIA, NATLSCO and the WMATA Construction Safety Engineer.

## REPORT OF ACCIDENT OR DAMAGE TO EQUIPMENT OR PROPERTY

1. This form shall be prepared covering each and every accident to equipment or property.
2. The form shall be prepared from information as a result of investigation or direct reports of the person or persons involved or responsible.
3. Report shall be furnished promptly.
4. This form shall be prepared by the contractor, who shall retain the original and submit copies to the RE, NATLSCO and MIA offices.
5. All accidents involving damage to property, including raw materials or equipment; installed equipment; motor vehicles and heavy construction equipment are reportable.
6. Investigation of alleged damage to private property:
  - A. All buildings along the route of the Metro System that may be affected by construction will have been inspected by the Contractor and a report submitted to the Contracting Officer, MIA and NATLSCO prior to the commencement of any construction work.
  - B. If, in the course of construction work, property damage occurs which is allegedly due to construction operations, this reporting procedure is to be followed.
  - C. If, however, a property owner reports damage to his property, of which his complaint is the first intimation, and alleges that it is due to construction, he will probably request prompt inspection.
  - D. If the property owner makes his complaint and request to the RE, the RE will then report the complaint on Form C-23.

- E. In complying with an owner's request for report of damage allegedly due to construction work, particular care is required to see and record only the fact, *and to avoid expressing opinion*. The owner's opinion shall be recorded as "remarks by owner".

# INSTRUCTIONS FOR IMPLEMENTATION OF THE WMATA CONSTRUCTION SAFETY INCENTIVE AWARD PROGRAM

All construction contractors will participate in the program and shall keep accurate records of employee hour exposure and accidents and submit reports to the MIA office in accordance with reporting procedures.

Awards shall be based on statistics reported on WMATA Form C-26—Washington Metropolitan Area Transit Authority Accident Experience Summary.

Awards shall be made in each group as follows:

## *Group A—Less than 100,000 employee hours*

Any Contractor in Group A who completes a project with more than 2,500 employee hours but less than 100,000 employee hours without a lost time injury shall receive a letter of commendation signed by the Contracting Officer.

## *Group B—More than 100,000 employee hours*

Any Contractor who accumulates the following employee hours of work without a lost time injury shall receive awards as indicated below:

100,000—Letter of Commendation

250,000—Certificate of Merit

500,000—Certificate of Excellence

750,000—Superior Award Certificate

1,000,000—Metro System Safety Trophy and Certificate of Honor

Letters of commendation, certificates and trophies shall indicate the Contractor's name, project name, project lo-

cation, type of work, number of manhours worked without a lost time accident, and the period of time covered by the award.

MIA will notify the Contracting Officer when a contractor becomes eligible for an award.

### FEDERAL (OSHA) REGULATIONS

Each contractor shall be familiar with the Federal Occupational Safety and Health Act (OSHA) as it pertains to his work responsibility, and will implement it as federal law requires.

All fatality cases and/or accidents in which five (5) or more persons are injured in any one accident shall be reported to the Area Director and/or Regional office within 48 hours from the time of the occurrence.

Regional Administrator  
U.S. Dept. of Labor  
15220 Gateway Center  
3535 Market Street  
Philadelphia, Pennsylvania 19104

*Region III—Delaware,  
D.C., Maryland, Penna.,  
Virginia, W. Virginia*

Phone: 215 596-1201

U.S. Dept. of Labor  
1110 A Federal Building  
Charles Center  
31 Hopkins Plaza  
Baltimore, Maryland 21201

*Baltimore Area Office*

Phone: 301 962-2840

U.S. Dept. of Labor  
O.S.H.A.  
Railway Labor Building  
400 First Street, N.W.  
Washington, D.C. 20210

*D.C. Area Office*

Phone: 202 961-5132

U.S. Dept. of Labor  
O.S.H.A.  
Federal Building  
P.O. Box 10186  
Richmond, Virginia 23240

*Virginia Area Office*

Phone: 804 782-2864

Copies of the Occupational Safety and Health Act of 1970 and related information on state plans, standards, education and training programs may be secured from the offices listed above or:

U.S. Department of Labor  
Occupational Safety and  
Health Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Phone: 202 528-8165

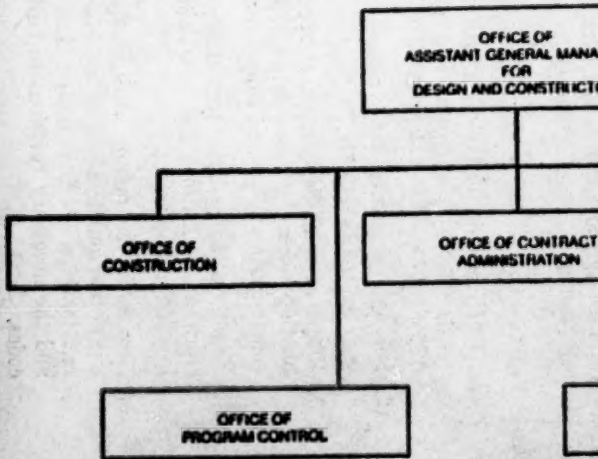


**DEPARTMENT OF  
DESIGN AND CONSTRUCTION**

[Attached as Exhibit B to WMATA's Opposition  
to the Plaintiff's 60(b)(3) Motion for  
Relief filed on November 9, 1982 in  
*Johnson v. Bechtel Associates  
Professional Corp., D.C.,  
et al., C.A. No. 81-0963*]



# Department of Design and Construction



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OFFICE OF ENGINEERING  
AND ARCHITECTURE

OFFICE OF  
REAL ESTATE

### *Primary Responsibility*

The Assistant General Manager for Design and Construction is responsible for supervising all aspects of the design and construction of the Metrorail system and major Metrobus facilities and equipment. Also, is accountable to the Board of Directors and the General Manager for the actions of the Offices of Engineering, Equipment Design, Architecture, Construction, Contract Administration, Program Control and Real Estate. The Assistant General Manager is the contracting officer for supplies, equipment, construction, and architectural and engineering services, real estate agreements including deeds and execution of declarations of taking, and services administered by the Department of Design and Construction.

As an Officer of the Authority, the Assistant General Manager for Design and Construction reports directly to the General Manager.

### *Broad Functions*

1. Establishes design criteria, standard specifications, general plans, standard plans, and construction management procedures.
2. Selects, negotiates, and awards architectural-engineering contracts.
3. Prepares final design plans, specifications and bidding documents and advertises and awards construction and related supply contracts.
4. Negotiates and administers utility contracts and work authorizations for new construction, relocation, and services.
5. Negotiates and administers master agreements with other public agencies covering the working relationships during design and construction and the necessary revisions to building and fire codes.

6. Furnishes engineering and technical services to Authority staff for the establishment of route locations, sites for stations and other facilities, operation schedules and furnishes drafting services as required.
7. Negotiates and administers contracts for environmental impact studies.
8. Administers the appraisal, acquisition, management, demolition, and disposal of real property interests, and the relocation of displaced occupants from acquired properties and payment of claims in connection therewith.
9. Attends such conferences with outside planning groups as may be required.
10. Prepares and maintains cost control estimates, schedules, and forecasts; assists in the preparation of the annual rail construction budget.
11. Furnishes administrative services to process design and construction contracts, contract modifications, payments, progress reports, and control procedures.
12. Manages and controls performance of transit car and related equipment design and project management services performed by consultants.

### *Primary Responsibility*

The Office of Construction (CONS) assures that Metro-rail and Metrobus construction projects are delivered on-time, within budget and established safety goals, and that the resulting facilities reflect high standards of quality and serviceability. To accomplish this primary responsibility, the Office of Construction intensively manages the construction and construction-related contracts and agreements which the Assistant General Manager for Design and Construction (DECO) and the Director of Construction, as Contracting Officers, enter into. Specifically, the Office provides over-all management of those contracts, to include field supervision and support services for them and places special emphasis on assuring that contractors comply with the terms of their contracts.

The Director reports to the Assistant General Manager for Design and Construction.

### *Detailed Functions*

1. Provides all aspects of construction management and field supervision of construction contractors including testing, transfer of completed facilities to the Department of Transit Operations or others, and closeout of contracts. Management and supervision are accomplished through Authority employees directly or through the General Construction Consultant (GCC) or other construction management consultants retained on ad hoc bases as special needs arise. In performing field supervision, emphasizes that the technical terms of the contract are to be met, that the contractor is to maintain schedule, and that the work is to be performed safely.
2. Supervises the GCC's and special construction consultants' performances. With support from the Office of Contract Administration (CONT), negotiates the annual GCC contract and participates in its administration.

3. Provides staff support to the Director in his capacity as Contracting Officer for all construction and construction-related contracts except those for which the Assistant General Manager for Design and Construction is specifically appointed Contracting Officer.
4. Develops and publishes policy and procedures for construction management, administration, and contract closeouts; provides close, direct liaison with the Urban Mass Transportation Administration (UMTA) on these matters; alerts UMTA to pending formal requests relative to contract modifications exceeding WMATA's approval authority.
5. Initiates, systematically records, and monitors construction contract Pending Change Orders. Negotiates and processes construction contract modifications and claims settlements for amounts greater than the approval authority delegated to the Resident Engineer.
6. Assists the Contracting Officers in making contractual determinations and decisions relative to negotiations and closeout settlements on those completed contracts which, due to claims, disputes and appeals, have not been financially closed out; furnishes UMTA with required documentation on completed contracts.
7. Administers, under the special direction of the Assistant General Manager for Design and Construction and with the assistance of other offices of the Department of Design and Construction and in coordination with the Offices of Bus Services (BUSV), Rail Services (RAIL), and General Maintenance (GMNT), a comprehensive, special construction program-management system for both Metrobus and Metrorail facilities, to include: (a) maintaining a priority listing of Metrobus and Metrorail special construction and facilities rehabilitation projects



well coordinated, mutual efforts between and among the affected Authority elements, the Resident Engineers, and the various contractors. A fuller discussion of meeting attendance, agenda, actions/decisions, and follow-up activities follows:

- (1) Attendance—In addition to representatives from the affected Authority elements and contractors, the affected structural, finish, and systemwide Resident Engineers and Area Managers attend.
  - (2) Agenda—Review progress of work, by contract, on the Phase; identify existing and potential problems (e.g., delays, design changes, and interferences between and among contractors).
  - (3) Actions/Decisions—Develop recommended actions; make necessary decisions; give appropriate on-the-spot directions needed to maintain the Phase schedule.
  - (4) Follow-up Activities—Identify the essential items to be specifically checked on during the routine, daily coordination contracts between and among the affected Resident Engineers and Area Managers; identify the essential items requiring ENGA, GMNI, Systems Maintenance, and consultant (e.g., General Architectural Consultant (GAC), General Engineering Consultant (GEC)) interface/input and which are to be specifically followed-up on prior to the next meeting, thus assuring proper coordination of all activities.
- b. Initiating, thru the responsible Resident Engineer, contractor actions to correct deficiencies and/or make changes, as necessary, to assure that operational and contract requirements are met.

- c. Scheduling and coordinating pre-energization activities in support of the Start-up Manager.
  - d. Participating with Start-up, Automatic Train Control (ATC) and Communications (COMM) Contractors, and the Resident Engineers, in scheduling dynamic testing activities; concurrently scheduling contractors' access into the start-up area to complete their work and correct deficiencies; keeping Start-up and Systems Maintenance informed of the various requirements and the most efficient schedule for meeting them.
  - e. Coordinating final acceptance by and turnover to the Department of Transit Operations of all facilities in the operational phase (requires advance contact, close coordination and direct working relationship with the responsible personnel from the accepting office(s)).
  - f. Preparing "after-action" reports and distributing to all concerned so that hard-earned experiences can be used to best effect in succeeding Phases.
13. Provides the Chairman of the Project Change Order (PCO) Review Committee, a committee established at the specific direction of the AGM/DECO to review all proposed design-change PCO's, rule on the adequacy of their justification prior to initiation of detailed design work, monitoring the status of the PCO's through the time of actual issuance to the contractor; and initiating necessary corrective actions, as appropriate. The Chairman is vested with authority to approve or disapprove proposed design-change PCO's at any stage of the review process or to issue additional guidance, as appropriate.
  14. Provides voting-member representation on design and construction Contractor Evaluation Boards.
  15. Performs the following functions to maintain a finger on the pulse of the construction industry, serve

the WMATA-compact jurisdictions, and serve the Authority's operating elements:

- a. Conducts technical reviews of information on new construction techniques that could lead to improved techniques and methods, performance, and materials on the Authority's construction projects.
- b. Conducts pre-bid conferences, Annual Construction Contractor Conferences, and periodic incentive-type evaluations of the GCC, Resident Engineer and other field offices.
- c. Furnishes appropriate Authority representation at conferences and meetings on construction problems and policies.
- d. Maintains liaison with contractor associations, labor unions and job-training organizations.
- e. Maintains necessary liaison with appropriate officials of the local jurisdictions which are participants in the WMATA Compact. Serves as point-of-contact with the general public and the business community relative to requests for construction information and other technical assistance.
- f. Consults and coordinates with other Authority elements, as appropriate, on matters pertaining to construction and startup of Metrorail and Metrobus facilities.

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### *Primary Responsibility*

The Office of Contract Administration is responsible for coordinating the procurement of material, equipment, engineering and construction services required for the Department of Design and Construction and Transit Operations, and for providing complete contract administration services throughout the life of each contract including the resolution of contract problems and disputes. In this regard, the Office is responsible for assuring compliance with the terms of each contract for architectural and engineering design, consulting services, materials and equipment; for coordinating the actions of other Authority offices concerned with such contracts and for providing liaison with contractors and prospective contractors.

The Director reports to the Assistant General Manager for Design and Construction as a member of the Department of Design and Construction.

### *Detailed Functions*

1. Provides contract support to other Authority offices in the negotiation of contracts for engineering, consultant, construction, equipment and transit services and modifications thereto.
2. Provides contract administration services to the Offices of Engineering, Construction, Equipment Design, Transit Operations and other offices in their administration of contracts.
3. Reviews and approves to the Assistant General Manager for Design and Construction, contractor requests for purchase of equipment, supplies and services under all cost-plus-fixed-fee contracts.
4. Evaluates contract disputes involving contract interpretation, suspension or acceleration of work, changed conditions and time extensions.

Makes determinations as to merit on allegations of differing site conditions.

5. Negotiates the settlement of unresolved contract disputes as directed by the Assistant General Manager for Design and Construction.
6. Prepares Findings of Fact and Final Decisions for the Assistant General Manager for Design and Construction in unresolved contract disputes.
7. Interprets and evaluates audit report findings and utilizes same in contract settlements; checks their conformity with cost and pricing data submittals.
8. Participates in the development and formulation of new contracting policies and procedures.
9. Reviews and approves all contract actions processed within various Authority offices.
10. Receives and evaluates bid and pre-award information and assists in the opening of all bids and proposals submitted to the Authority for the Department of Design and Construction, and Transit Operations.
11. Coordinates with the Office of the General Counsel allegations of mistakes, bidding errors, or other procurement discrepancies.
12. Coordinates the payment of contractors' invoices on all cost reimbursable contracts and fixed price contracts.
13. Coordinates contract close-out, suspension and termination actions.
14. Provides guidance regarding contractual matters to Authority and consultant personnel designated as authorized representatives of the Assistant General Manager for Design and Construction contracting office. Assists the Office of Construc-

tion and the General Construction Consultant in the resolution of contract disputes involving the interpretation of the terms of construction contracts.

15. Establishes and maintains the Authority's official contract files for all design construction, equipment and consultant contracts, and final decisions of the Assistant General Manager for Design and Construction.
16. Reviews the submittal of contract actions to the Urban Mass Transportation Administration (UMTA) for compliance with designated procedures.

### *Primary Responsibility*

The Office of Engineering & Architecture has the responsibility for the overall design of Metrorail system and Metrobus system facilities, transit buses and rail transit vehicles. This office's primary objective is to provide contract documents (plans, specifications, bidding documents, etc.) for the construction and equipping of a complete and functional rail rapid transit system and for new, rehabilitated or expanded Metrobus facilities. ENGA is responsible for development and updating of all design standards and parameters of the entire Metro system, for the review and approval of designs for construction adjacent to Metro facilities and for the engineering and architectural support to other Authority departments and offices.

The Director reports to the Assistant General Manager for Design and Construction as a member of the Department of Design and Construction.

### *Detailed Functions*

1. Implements directives and policies of the Board of Directors, the General Manager and the Assistant General Manager for Design and Construction.
2. Assists the Assistant General Manager for Design and Construction by monitoring and reviewing the activities of the general engineering, architectural, soils systems, vehicle and other consultants who perform design services for the Authority.
3. Controls performances, reviews and recommends approval of the final design services, including payment invoices and work products developed by consulting architectural and engineering firms under contract to the Authority and monitored by the Office of ENGA.

4. Prepares master agreements with public and private agencies, and utilities, and supplements thereto.
5. Prepares and coordinates, with the appropriate agencies, revisions to building and fire codes required to accommodate the transit system.
6. Prepares and coordinates the preparation of design criteria and updates standard specifications for use throughout the rapid transit system.
7. Provides engineering and architectural support to the Office of Planning and Development in the development of the Metrorail system including feasible station, route and system layouts including development of typical types of construction that could be employed in that layout with consideration to topographic and man-made features that exercise control over the alignment and station location, and to the social and economic consideration.
8. Develops environmental studies and presentations in support of new or expanded facilities.
9. Monitors development of design and procurement of automatic train control (ATC) and communications (COMM) systems; prepares specifications for peripheral subsystems and equipment such as bus radios and major modifications to original designs.
10. Evaluates on-going procurement of automatic train control and communications systems and equipment for compatibility to existing facilities; analyzes new techniques and equipment for cost and operational improvements; checks maintenance and servicing experience to determine whether operating design objectives established in original procurements have been accomplished and whether new analyses are required.



11. Determines the necessity for relocation of utilities and conducts negotiations with utility owners or managers to develop suitable plan for the relocation.
12. Develops basic design for special facilities.
13. Identifies and certifies to the Office of Real Estate the minimal real property interests required for construction, operation and maintenance of Metrorail and Metrobus facilities.
14. Performs drafting, charting and blueprinting services for the Authority.
15. Performs field inspections as necessary to assure that construction is being performed in accordance with design and to obtain information leading to improvement in the design of future works.
16. Participates in construction surveillance to include review of suggested field changes or modifications to the approved design.
17. Provides engineering services in support of other activities of the Authority such as studies of existing or proposed facilities as requested by affected department or office; investigates failures and recommends corrective actions; assists in the development of safety and fire protection standards; reviews and approves designs for construction (by others) adjacent to Metro facilities; processes permits for use of Authority right-of-way by others.
18. Coordinates, together with other Authority officers, all architectural and visual design work with outside agencies (such as the National Capital Planning Commission, The Commission of Fine Arts, the National Park Service) and citizens representatives of local communities.

19. Directs the General Architectural Consultant in a program of visual displays as required by design development and community coordination, the displays consisting of perspective renderings and scale models of varying complexity.
20. Coordinates and assists in the study of, and solution to, safety, space use, and graphics requirements encountered in the transit system.
21. Responsible for the monitoring of planting procurement and landscape installation contracts for which the General Architectural Consultant is section designer and construction supervisor.
22. Responsible for review, comment, and determination of layout for all signage and graphics requirements for the rapid transit system.
23. Develops and prepares design plans and specifications for procurement of buses, automatic fare collection equipment, parking lot equipment, and revenue processing equipment.
24. Evaluates on-going procurement of systems and equipment for compatibility to existing facilities, analyzes new techniques and equipment for cost and operational improvements, checks maintenance and servicing experience to determine whether new analyses are required.
25. Provides inputs to other offices on schedule requirements for systems and equipment procurements.
26. Maintains an effective liaison with other offices, other transit properties and governmental agencies (as appropriate) in order to remain abreast of the state-of-the-art of rail transit and bus technology, and system assurance and safety programs.

### *Primary Responsibility*

The Office of Program Control is responsible for Metro-rail and Metrobus Capital Construction System Program-ming to include: monitoring all funds allocated to the various real estate, design, construction and supporting functions; scheduling of planning, design, construction and pre-operations activities; and for developing integrated total future system function costs within available funds.

The Director reports to the Assistant General Manager for Design and Construction as a member of the Department of Design and Construction.

### *Detailed Functions*

1. Monitors and advises management on the status of Metrorail and Metrobus capital construction program fund sources utilizing the Project Management System and accounting records for status of obligations and expenditures.
2. In consultation with the appropriate design and construction offices and the general consultants, maintains the system program schedules to include the detailed design and construction schedule. Administers, supervises and advises on the project management of design and construction contracts, including determining by computer the contractors' progress toward meeting the program schedule.
3. Prepares the Metrorail and Metrobus capital construction program for the Authority within parameters established by the Board of Directors to include integrating into a coherent program past history as recorded by accounting with future forecasts of inflation, obligations, expenditures, funds available and schedules.

[SEAL]

WASHINGTON  
METROPOLITAN  
AREA TRANSIT  
AUTHORITY

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GENERAL  
PROVISIONS  
AND  
STANDARD  
SPECIFICATIONS  
FOR CONSTRUCTION  
PROJECTS

1978

[Attached as Exhibit C to WMATA's Opposition to the  
Plaintiff's 60(b)(3) Motion for Relief filed on  
November 9, 1982 in *Johnson v. Bechtel  
Associates Professional Corp., D.C.,  
et al.*, No. 81-0963]

[SEAL]

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TRANSIT AUTHORITY****general provisions and standard specifications  
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## GENERAL PROVISIONS

## 1. DEFINITIONS

(a) The term "Authority" as used herein means the Washington Metropolitan Area Transit Authority (created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.)

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Authority and includes a duly appointed successor or authorized representative.

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## 3. CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (1) in the specifications (including drawings and designs);
- (2) in the method or manner of performance of the work;
- (3) in the Authority-furnished facilities, equipment, materials, services, or site; or
- (4) directing acceleration in the performance of work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances,

and source of the order and that the Contractor regards the order as a change order.

. . . .

## 7. PAYMENTS TO CONTRACTOR

(a) The Authority will pay the contract price as hereinafter provided.

(b) The Authority will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price or lump sum bid items showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration

(1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

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## 10. INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in this contract, inspection and test by the Authority of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make

off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Authority after acceptance of the completed work under the terms of paragraph (f) of this article, except as hereinabove provided.

. . . .

#### 11. SUPERINTENDENCE BY CONTRACTOR

The contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

#### 12. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

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#### 14. OTHER CONTRACTS

The Authority may undertake or award other contracts for additional work, and the Contractor shall fully coop-

erate with such other contractors and Authority employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Authority employees.

. . . .

## 20. EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination article.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commit-

ments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11875 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11875 of October 13, 1967, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination articles of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11875 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11875 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regula-



tions, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the Contracting Officer will direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Officer, the Contractor may request the Authority to enter into such litigation to protect the interests of the Authority.

## **21. UTILIZATION OF SMALL BUSINESS CONCERNS**

(a) It is policy of the Authority that a fair proportion of the purchases and contracts for supplies and services for the Authority be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

## **22. SUSPENSION OF WORK**

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall

be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this article for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

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## 26. PAYROLLS AND BASIC RECORDS

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of three years thereafter for all laborers and mechanics, including apprentices, trainees, watchmen, and guards, working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) of the article entitled "Davis-Bacon Act" he

shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Authority Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including apprentices and trainees conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirements for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the article entitled "Davis-Bacon Act."

(c) The Contractor shall make the records required under this article available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

\* \* \* \*

## 29. SUBCONTRACTS

The Contractor agrees to insert the articles hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination-



Debarment" in all subcontracts. The term "Contractor" as used in such articles in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Authority Prime Contractor."

. . . .

### 35. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal-entity, each such entity shall be jointly and severally liable hereunder.

. . . .

### 40. SUBCONTRACTORS

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the articles of this contract entitled "Equal Opportunity," "Davis-Bacon Act," "Contract Work Hours Standards Act-Overtime Compensation," "Apprentices," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts" and "Contract Termination-Debarment." Nothing contained in this contract shall create any contractual relation between the subcontractor and the Authority.

. . . .

### 44. ACCIDENT PREVENTION

(a) In order to provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this contract, the Contractor shall

comply with all pertinent provisions of Article 7.A "Safety Requirements" of the General Requirements, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property materials supplies and equipment incidental to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this article by subcontractors will be the responsibility of the Contractor.

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program.

. . . .

## 56. CERTIFICATION OF NONSEGREGATED FACILITIES BY CONTRACTORS AND SUBCONTRACTORS

(a) Prior to the award of any subcontract, or federally assisted construction contract or subcontract, required to contain the Equal Opportunity article contained in this Contract, the Contractor shall obtain the certification set forth in the Invitation of Bids. This certification may be required by the Contractor, either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

. . . .

## 58. FORCE ACCOUNT WORK

(a) In the event equitable adjustments pursuant to the "Changes" article of these General Provisions cannot be agreed to in a timely manner, the Contracting Officer reserves the right to order work on the force account basis. When work is ordered under this article and not withstanding the provisions of the "Changes" article, compensation for this work shall be determined as hereinafter provided and shall constitute the total compensation to be paid for the changes to the work. The labor, materials and equipment used in the performance of such work shall be subject to the approval of the engineer.

(b) Work Performed By or For Contractor: Labor, materials, and equipment shall be furnished by the Contractor or by a Subcontractor or by others on behalf of the Contractor. The Contractor will be paid therefor as hereinafter provided, except where agreement has been reached to pay in accordance with paragraph (c) below. The following percentages will be added to the totals computed as provided in the following paragraphs (b) (1) through (b) (4):

Labor	18 percent
Materials	15 percent
Equipment	10 percent

To the total computed under paragraphs (b) (1) through (b) (4) and the above percentages, only one additional 10 percent mark-up for subcontract work will be granted regardless of the tier of subcontractor who performs the work, and one percent will be added for Contractor's bond. For the purposes of this article, "Subcontractor" is defined as an individual, partnership, corporation, association, joint venture, or any combination thereof, who contracts with the Contractor to perform work or labor or render service on or about the work. The term Subcontractor shall not include those who supply materials only. When work paid for on a force account basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the Authority for such work and no additional payment therefor will be made by the Authority by reason of performance of the work by a Subcontractor or by others.

(1) Labor: The cost of labor used in performing the work, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

A. The gross actual wages paid including income tax withholdings but not including any employer payments to or on behalf of workmen for health and welfare, pension, vacation, insurance, and similar purposes.

B. To the actual gross wages, as defined in paragraph (b) (1) A, will be applied a percentage based upon current applicable labor rates concerning payments made to or on behalf of workmen other than actual wages, which percentage shall constitute full compensation for all payments other than actual gross wages as defined in paragraph (b) (1) A above and subsistence and travel allowance as specified in paragraph (b) (1) C, below. The Contractor shall compute a separate percentage for each craft, or a composite percentage for all crafts if so approved by the Engineer. All computed percentages shall be submitted to the Engineer for approval within 90

days after receipt of Notice to Proceed or as directed by the Engineer prior to any force account work being performed.

C. Subsistence and travel allowance paid to such workmen if required by collective bargaining agreements.

The charges for labor shall include all classifications through foremen when engaged in the actual and direct performance of the work. They shall not include charges for such overhead personnel as assistant superintendents, superintendents, office personnel, timekeepers, and maintenance mechanics.

(2) Materials: The cost of materials required for the accomplishment of the work will be delivered cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

A. If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the Authority notwithstanding the fact that such discount may not have been taken.

B. If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials, including handling, shall be deemed to be the price to the actual supplier as determined by the Engineer.

C. If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment therefor will not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.

D. The cost of such materials shall not exceed the lowest current wholesale prices at which such materials

are available in the quantities concerned, delivered to the job site, less any discounts as provided in paragraph (b) (2) A, above.

E. If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with paragraph (b) (2) D, above.

The Contractor shall not be compensated for indirect costs and profit on Authority furnished materials.

(3) Equipment: The Contractor shall be paid for the use of equipment in accordance with the "Payment for Use of Equipment" article of the General Requirements. The Contractor shall furnish all data which might assist the Engineer in the establishment of such rates.

A. Operators of equipment will be paid as provided under paragraph (b) (1), above.

(4) Subcontracts: The cost for subcontract work will be the actual cost to the Contractor for work performed by a subcontractor as computed in accordance with paragraph (b) above.

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## 61. AFFIRMATIVE ACTION PROGRAM

(a) The Affirmative Action Program submitted in accordance with the instructions to Bidders, Paragraph 17 (b) (4) shall be implemented and maintained in force by the Contractor during the term of the contract and be made available to affected minority groups. If such Program is denied a group, the burden shall be on the Contractor to show that the group is not an affected group. Emphasis is placed on the following requirements not to the exclusion of other requirements of these instructions or the contract documents:

(1) To ensure equal employment opportunity in the construction of Metro, the Contractor shall recruit minor-



ity persons necessary to meet the requirements of the Affirmative Action Program and involve to the fullest, local vocational institutions, and trade unions in the effort. Minorities shall be afforded every reasonable opportunity for training and advancement to ensure quality with non-minority employees. The Contractor, insofar as practicable, shall employ in the performance of the work, qualified citizens who are residents of the area comprising the Authority Transit Zone.

(2) It is the policy of the Authority that equal opportunity to participate in Authority procurements be provided to minority business enterprises. In order to ensure that a fair proportion of the purchases and contracts for supplies and services for the Authority are placed with minority business enterprises, the Contractor agrees to take affirmative action, to the fullest extent consistent with sufficient construction of the Metro System, to identify qualified minority business firms, solicit bids and quotations from them, and in making awards and purchases, give equitable consideration to minority business enterprises. The method for accomplishing this shall be as delineated in the Affirmative Action Program submitted to the Contracting Officer prior to award of the contract, and shall include:

A. Arranging solicitations, time for the preparation of bids and offers, quantities, specifications, and delivery and payment schedules so as to facilitate the participation of minority group enterprises in the construction of Metro System.

B. Affording minority group enterprises within the Washington Metropolitan Area realistic notice of each subcontract, opportunity to bid for it, and encouragement to do so.

C. Providing, where no conflict of interest exists, technical guidance and counseling to any minority group enterprise which seeks or needs assistance in competing



for subcontracts, and to make known to the minority group community in the area of solicitation referred to in the preceding subparagraph that these services are available.

(3) The Contractor shall provide for and maintain a full time Equal Employment Opportunity Officer (EEO) to implement the Affirmative Action Program on those contracts exceeding \$2,500,000. On contracts of a lesser amount, the Contractor will designate a person part time to act as the EEO Officer. The EEO Officer shall be the liaison between the Contractor and the Contracting Officer's authorized representative with regard to the submission of required or requested EEO reports and shall record his efforts to inform the minority community of available employment with the Contractor and record their responses. The EEO Officer shall also investigate and make every reasonable effort to resolve all complaints of discrimination based on race, sex, religion or national origin within the company and the contractor's work force at the construction site. Failure to resolve such problems shall be reported in writing to the Contracting Officer.

(4) The Contractor shall implement a uniform method of keeping data concerning ethnic classifications of all personnel and furnish all subcontractors with guidelines to develop a system of maintaining such records. The company format for such data keeping shall be as submitted to the Contracting Officer prior to the award of the contract. Where the Contractor, after reasonable efforts, is unable to locate sufficient minority persons and/or businesses to carry out the intent of the Affirmative Action Program, the Contracting Officer will; (a) Review the documentation recording the Contractor's efforts, and (b) Offer to the Contractor any reasonable alternatives or additional resources. The Contractor efforts and Contracting Officer's review of these efforts should normally be accomplished in a time period of 30 days after Notice

to Proceed during which time the Contractor shall proceed with his adopted construction schedule.

(5) The Contractor shall publicly display in every employment advertisement that it practices equal opportunity employment. Additionally, posters issued by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance shall be posted in places highly visible to all workers, supervisors and employees.

(6) The Contractor shall make contact with local Contractor Associations and other organizations whose purpose is to promote equal employment opportunity.

(7) The Contractor shall maintain a program for the advancement of apprentices. Apprentices shall be advanced in the trade as their abilities develop in accordance with the requirements of the apprentice training program of the Manpower Development Training Program.

(8) With respect to subcontractors, the Contractor shall:

A. Determine those areas in which minority subcontractors may be used.

B. Determine if there are minority subcontractors available to perform such contract work and identify them.

C. Contact the WMATA Office of Minority Development if assistance in identifying minority contractor capability is needed.

D. Solicit bids from these subcontractors and award as appropriate.

(9) The Contractor shall consult with the minority subcontractors regarding the Contractor's requirements as they pertain to ability to perform, financial stability, and the utilization of subcontracts.

(10) For the purpose of this program, "minority group enterprise" means any sole proprietorship, partnership, or corporation of which the proprietor, at least half of the partners, or at least half of the Board of Directors, officers, or those exercising effective control, respectively, are minority group members.

(11) The primary obligation to establish and maintain a complete and effective program rests with the Contractor.

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**DIVISION 1—GENERAL REQUIREMENTS**

<b>Section No.</b>	<b>Title</b>
101	<b>GENERAL REQUIREMENTS</b>

# SECTION 101—GENERAL REQUIREMENTS

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#### 4. SUBCONTRACTS

##### A. Subcontracts:

(1) The division or sections of the Specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(2) The Contractor shall not enter into subcontracts totaling in amount more than the percentage of the total contract price permissible under the General Requirements, without the written permission of the Contracting Officer.

(3) Before entering into any subcontracts, the Contractor shall submit a written statement to the Contracting Officer giving the name and address of the proposed subcontractor, the portion of the work and material which he is to perform and furnish, and any other information tending to prove that the proposed subcontractor has the necessary facilities, skill integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract.

(4) If the Contracting Officer finds that the proposed subcontractor is qualified, he will notify the Contractor within ten days. If the determination is to the contrary, however, the Contracting Officer will, within ten days, notify the Contractor who may thereupon submit the name of another proposed subcontractor unless he decides to do the work himself.

(5) The Contracting Officer's approval of a subcontractor shall not relieve the Contractor of any of his responsibilities, duties, and liabilities hereunder. The Contractor shall be solely responsible to the Authority for the acts or defaults of his subcontractor and of such sub-

contractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent and employees of the Contractor to the extent of his subcontract. He shall also be responsible for the coordination of the work of the trades, subcontractors and material men.

(6) No subcontractor shall be permitted to perform work at the site until he, or the Contractor, in compliance with the provisions of the "Indemnification and Insurance" Article of these General Requirements, has furnished satisfactory evidence of insurance as required.

(7) The Contractor shall promptly, upon request, file with the Engineer a conformed copy of the subcontract, with the price and terms of payment deleted.

(8) The Authority or its representatives will not undertake to settle any difference between the Contractor and his Subcontractors, or between Subcontractors.

## 5. SEPARATE CONTRACTS

### A. Work by Others:

(1) This Contract is one of a series of contracts for the construction of the Washington Metropolitan Area Transit System. During the progress of the work under this Contract it will be necessary for other contractors and persons employed by the Authority to work in or about the project. The Authority reserves the right to put such other contractors to work and to afford such access to the site of the work to be performed hereunder at such times as the Authority deems proper. The Contractor shall not impede or interfere with the work of such other contractors engaged in or about the work and shall so arrange and conduct his work that such other contractors may complete their work at the earliest date possible. The cooperation of the Contractor with the other contractors is mandatory.

(2) The exercise of such reserved right aforesaid by the Authority to permit other contractors and

persons to do work in or about the contract area shall in no way nor to any extent relieve the Contractor from liability for all loss and damage to the work due to or resulting from his operations.

(3) The Engineer will decide any disputed questions regarding the performance of the work, access to and clearing up of the site.

(4) The Contractor shall advise the Engineer in writing of all agreements pertaining to coordinating his work with the work of other contractors engaged upon the project and priority of performance between the various contractors.

(5) Provisions similar to the above shall apply to the relations between the Contractor and Utility Companies performing work in connection with Metro construction.

(6) The Contractor shall cooperate with all other contractors requiring access to the work, regarding access to the site, maintenance of security, temporary facilities, cleaning of the site, and like matters requiring common effort.

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## 7. PROTECTION OF PERSONS AND PROPERTY

### A. Safety Requirements:

(1) The Contractor shall be responsible for ensuring that the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia, or political subdivision in which the work is being performed, as well as the Metro Coordinated Safety Program and Reporting Procedures Manual issued by the Authority, and the Department of Labor-Occupational Safety and Health Administration provisions, pertaining to the safe performance of the work are observed. Further, that the methods of performing the work do not involve undue danger to the personnel employed thereon, the public, and

public and private property. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall immediately be forwarded to the Engineer.

(2) The Contractor shall employ and assign to the work a full-time safety superintendent who has specialized training and substantial experience in construction safety supervision. He shall have a working knowledge of all U.S. Department of Labor (OSHA) regulations. He shall have the ability to develop and conduct safety training courses. He shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The safety superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the work and the property affected thereby. The safety superintendent must be acceptable to the Contracting Officer, and his performance will be reviewed by the Contracting Officer on a continuing basis. If the safety superintendent's effectiveness is below standard, the Contractor shall replace him at the Contracting Officer's direction. Once employed, the safety superintendent shall not be changed without permission of the Contracting Officer.

(3) First-Aid Stations: A first-aid station shall be established at the site of the work and fully equipped. A certified first-aid attendant shall be on duty in the station at all times when work is in progress except when on emergency calls.

## 8. INSURANCE

### A. Indemnification and Insurance:

#### (1) Indemnification:

a. The Contractor shall save and keep harmless and indemnify the Authority against any and all liability claims, and the costs of whatsoever kind of nature arising or alleged to arise for injury, including personal

injury to or death of any person or persons, and for loss or damage to any property; occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work in connection with this Contract, resulting in whole or in part from the negligent acts, errors or omissions of the Contractor, any subcontractor, or any employee, agent or representative of the Contractor or subcontractors.

b. The Contractor and his subcontractors of all tiers shall also indemnify the Authority's General Construction Consultant against liabilities arising out of the Contractor's work. Such indemnification shall be limited to the assumed liability for which coverage is afforded for the Contractor and such subcontractors under the Authority's Coordinated Insurance Program.

(2) Insurance:

a. The Authority will procure and pay premiums for insurance for the benefit of the Contractor (among others) as set forth in the WMATA Insurance Specifications.

b. The Contractor will procure and pay premiums for Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned, hired, rented or leased vehicles to be used in the performance of this Contract, and not covered under the comprehensive general liability insurance to be provided by the Authority. The coverage under such policy, or policies, shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of \$300,000 each occurrence.

(3) Special Provisions of Insurance Furnished by Contractor:

a. All insurance shall be procured from insurance or indemnity companies acceptable to the Authority and licensed and authorized to do business in the Dis-

trict of Columbia and/or the States of Maryland and Virginia. Authority approval or failure to disapprove insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability damage and accidents as set forth herein.

b. The Contractor shall forward to the Contracting Officer for approval a certificate or certificates, issued by the insurer(s), of the insurance required under the foregoing provisions, including special endorsements. Such certificate(s) shall be in a form satisfactory to the Authority and shall list the various coverages and limits. This insurance will contain the provision that 30 days prior written notice will be given the Contracting Officer in the event either the Contractor or his insurer(s) substantially changes, cancels or refuses to renew this insurance; notice by insurer(s) to be sent to the Contracting Officer. The Contractor shall promptly furnish, if requested by the Contracting Officer, a duplicate original of each insurance policy.

c. If at any time the above required insurance policies should be cancelled, terminated or modified so that the insurance is not in full force and effect as required herein, the Contracting Officer may terminate this Contract for default or obtain insurance coverage equal to that required herein, the full cost of which shall be charged to the Contractor and deducted from any payments due the Contractor.

d. The Contractor shall require his subcontractors, at all tiers, to carry the insurance coverages required herein. In compliance with the insurance requirements specified herein the Contractor may have at his option, the insurance coverages required herein provided by the Contractor's insurer for all or any of his subcontractors at all tiers and if so elected by the Contractor the evidence of insurance submitted shall so stipulate.



e. Any contract of insurance or indemnification naming the Authority, the United States of America or any of its departments, agencies, administrations or authorities, shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that the Authority or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

f. No separate payment will be made for providing insurance as prescribed herein but the cost thereof shall be included in the prices for the various items as set forth in the Unit Price Schedule.

g. In the event the required certificates of insurance as specified herein are not furnished within 10 calendar days after date of award of the Contract, the Contracting Officer may issue the notice to proceed and contract time will start upon its receipt as specified in the "Project Scheduling" Article of these General Requirements. However, in no event shall work at the site be performed until the required certificates of insurance have been furnished.

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[Attached as Exhibit #2 to the Deposition of  
Robert R. Thompson filed on November 9, 1982  
in *Wilmes v. Bechtel Civil and Minerals,*  
*Inc., et al.,* C.A. No. 81-0114.]

## LOCATION CODES, December 1981

Numbers and Subcontractors	Contractors	19Z Contract
1000	Granite Construction Company	1B0042
1001-15	Various Sub-Contractors Job Completed 1974	(DC)
1000	Excavation Construction Company Job Completed 1972	1C0063 (VA)
1000	Square-Lafra	1C0071
1001-22	Various Sub-Contractors Job Completed 1975	(VA)
1000	Norair Engineering Corporation	1B0031
1001-6	Various Sub-Contractors Job Completed 1974	(DC)
1000	Norair Engineering Corporation	1C0062
1001-21	Various Sub-Contractors Job Completed 1976	(VA)
1000	Norair Engineering Corporation	1B0033
1001-32	Various Sub-Contractors Job Completed 1972	(DC)
1000	Hughes and Smith, Inc.	1C0064
1001-9	Various Sub-Contractors Job Completed 1972	(VA)
01000	Whiting Corporation	1Z4021
01000	Westinghouse Electric Corporation	1Z4051
01001-6	Various Sub-Contractors Job Completed 1978	(DC)
01000	Bechtel Corporation	1Z3262 (DC)
01000	Square-Lefra	1B0041
01001-3	Various Sub-Contractors Job Completed 1971	(DC)
01000	Fred J. Early, Jr. Company/	1C0011
01001-34	Massaman Construction Company (JV)	(DC)
01001-34	Various Sub-Contractors Job Completed 1976	

Numbers and Subcontractors	Contractors	19Z Contract
01000	Newton Asphalt	1J0082
01001-4	Various Sub Contractors Job Completed 1977	(VA)
* * *		
11801009	E.P.I. Architectural Systems, Inc.	
11801010	D & R, Inc.	
11801011	D & R Roofing and Sheet Metal	
11801012	A & P Contracting	
11801013	Webb Builder Hardware	
11801014	Prospect Industries, Inc.	
11801015	Nova Mechanical Construction, Inc.	
11801016	Standard Erecting Company	
11801017	Long Fence Construction Company	
11801018	Kasmer Electrical Contracting	
11801019	Peter Bratti Associates	
11801020	Superior Fireproofing Door Company	
11801021	Tonstad Caulking Company	
11801022	Trio Industries, Inc.	
11801023	Washington Plate Glass Company, Inc.	
11801024	tyroc, Inc.	
11801025	H & P Hauling	
11801026	Seaboard Foundations	
11801027	Underground Technology Development	
11801028	Shug Associates	
11801029	Carl M. Wever Steel Company, Inc.	
11801030	Allied Strpping, Inc.	
11801031	Keystone Steel Construction	
11801032	D.I. Chapman	
11801033	Sacc	
11801034	Flaherty Iron Works	
11801035	Karon Masonry, Inc.	
11801036	Pagley Security Specialist	
11801037	Hamilton and Spiegel	
11801038	A & R Insulation	
11801039	Overhead Door Company	
11801040	Comfort Control	
11801041	Pricement Construction	
11801042	Corson and Gruman	
11801043	The Fingles Company	
11901000	Williams Enterprises, Inc. Job Completed—1977	1C4062 (VA)
12001000	C.D.P.C. Construction Company Job Completed—1977	1A0083 (DC)

Numbers and Subcontractors	Contractors	19Z Contract
12101000	Ball Healy Granite	
12101001	District Utilities	1A0062
12101002	Geo-Facts, Inc.	(DC)
12101003	Western Caissons, Inc.	
12101004	Tunnel Electric	
12101005	Keystone Steel Company	
12101006	R.M. Thornton	
12101007	Peter Mitchell, Inc.	
12101008	Jones & Artis Construction Company	
12101009	Floating Slab Contractors	
12101010	Warren-Ehret-Linck Company	
12101011	Omega Equipment Company	
12101012	Zonver-Jarrett Foundation Company	
12101013	Tonstad Caulking Company, Inc.	
12101014	Corson & Gruman	

[Attached as Exhibit #2 to the Deposition of Delmer Ison  
filed on November 17, 1982 in *Wilmes v. Bechtel Civil  
and Minerals, Inc., et al.*, C.A. No. 81-0114]

Washington Metropolitan Area Transit Authority

## CONSTRUCTION CONTRACT

CONTRACTOR:	Contract No. 1A0062
Gordon H. Ball, Inc., S. A. Healy Company and Granite Construction Company (A Joint Venture) 6845 Elm Street Suite 212 McLean, Virginia 22101	Date: Jun. 17, 1976

CONTRACT FOR: Section A-6b, Rockville Route, Zoologi-  
cal Park, Cleveland Park and Van Ness  
—All Stations

CONTRACT PRICE: \$70,933,105

PERIOD OF PERFORMANCE: Within 1185 calendar days  
after Receipt of Notice to  
Proceed

In consideration of the covenants contained herein, the Washington Metropolitan Area Transit Authority (hereinafter called the Authority), represented by the Contracting Officer executing this contract, and the individual, partnership, joint venture, or corporation named above (hereinafter called the Contractor), mutually agree to perform this contract in strict accordance with the General Provisions, Labor Standards Provisions Applicable to Contracts in Excess of \$2,000, and the following designated specifications, schedules, drawings, and conditions:

1. Specification No. 1FB-C-174
  2. Bid Form No. 1FB-C-174
  3. Amendments 1-8, inclusive
  4. Drawings as listed in Appendix C: Special Conditions
- ALTERATIONS. The following alterations were made in this contract before it was signed by the parties hereto:

In Witness Whereof, the parties hereto have executed this contract as of the date entered above.

GORDON S. BALL, INC.  
Contractor

By /s/ Hugh N. Mize, Jr.  
HUGH N. MIZE, JR.  
Vice President

ATTEST: /s/ R. A. Roberts  
R. A. ROBERTS  
Assistant Secretary

S. A. HEALY COMPANY  
Contractor

By /s/ Donald J. Zier  
President

ATTEST: /s/ George J. Malina  
GEORGE J. MALINA  
Assistant Secretary

GRANITE CONSTRUCTION  
COMPANY  
Contractor

By /s/ H. B. Scott  
H. B. SCOTT, President

ATTEST: /s/ Leo R. Westwater  
LEO R. WESTWATER  
Secretary

WASHINGTON METROPOLITAN  
AREA TRANSIT AUTHORITY

By /s/ R—— M. Dodge  
Contracting Officer

ATTEST: /s/ Delmer Ison  
Secretary

NOTE: Execution for the Contractor shall be accompanied by a Power of Execution and Certification of that counsel.

[Attached as Exhibit A to the Plaintiff's Memorandum  
of Points and Authorities in Support of His Motion to  
Amend the Complaint filed on November 19, 1982  
in *Wilmes v. Bechtel Civil and Minerals, Inc.,  
et al.*, C.A. No. 81-0114]

### Certificate of Insurance

LUMBERMEN'S MUTUAL CASUALTY COMPANY

THE CERTIFICATE IS ISSUED AT THE REQUEST OF:

Gordon W. Ball, Inc., S. A. Nealy Company  
and Granite Construction Company  
(A Joint Venture)  
2845 Elm Street, Suite 212  
McLean, VA 22101

DATE ISSUED: July 6, 1976

IS POLICIES INDICATED BELOW HAVE BEEN ISSUED TO:

Washington Metropolitan Area Transit Authority (WMATA)  
600 Fifth Street, N. W.  
Washington, D. C. 20001  
And its/their General

GORDON W. BALL, INC., S.A. NEALY COMPANY AND GRANITE CONSTRUCTION CO. (JV)

POLICY FORM	POLICY NUMBER	POLICY PERIOD	COVERAGE AND LIMITS OF LIABILITY
Workmens Compensation and Employers Liability	1CL751451	7-30-71 UNTIL CANCELLED	Laws of District of Columbia, Maryland and Virginia Coverage B - \$1,000,000
Comprehensive General Liability	1VL751451	7-30-71 UNTIL CANCELLED	\$5,000,000 each occurrence (XI & VD combined) each insured \$5,000,000 annual aggregate (when applicable) each insured \$25,000,000 aggregate each occurrence all insureds

DESCRIPTION OF OPERATIONS AND LOCATIONS TO WHICH CERTIFICATE APPLIES

Neire Construction under WMATA Prime Contract No. 1A006Z

This certificate of insurance neither affirmatively nor negatively attests, extends or alters the coverage afforded by the above mentioned policies.

KEY CODE: 121-21000

ONE W. Long Grove, Illinois

*BE Asquith*

INSURANCE DEPARTMENT



<b>U.S. DEPARTMENT OF LABOR</b> <b>EMPLOYMENT STANDARDS ADMINISTRATION</b> <b>OFFICE OF WORKERS' COMPENSATION PROGRAMS</b>		<b>NOTICE TO THE DEPUTY COMMISSIONER</b> <b>THAT RIGHT TO COMPENSATION IS</b> <b>CONTESTED</b>	
<b>NOTE:</b> This form must be completed, in duplicate, and submitted to the Deputy Commissioner on or before the 14th day after the employer has knowledge of the alleged injury or death, whenever the right of the claimant to compensation is contested. (33 U.S.C. 914(c)). The Deputy Commissioner will forward a copy of the notice to the claimant.		<b>OFFICIAL USE ONLY</b> <b>Case No. 202 CU 100317 H</b> Ins. carrier's file Date received	
<input type="checkbox"/> Longshoremen's and Harbor Workers' Compensation Act <input checked="" type="checkbox"/> District of Columbia Workers' Compensation Act		<input type="checkbox"/> Outer Continental Shelf Lands Act <input type="checkbox"/> Defense Base Act <input type="checkbox"/> Nonappropriated Fund Instrumentalities Act	
<b>1a. Employer's name</b> Bell Healy Granite		<b>b. Address (Street, No., City, State, Zip code)</b> P.O. Box 11002 Washington, D.C. 20008	
<b>2a. Claimant's name</b> Stanley Wilms		<b>b. Address (Street, No., City, State, Zip code)</b> 601 Four Mile Rd. Alexandria, Virginia	
<b>3. Date of alleged injury or death</b> 01/01/78	<b>4. Time of injury</b> Unknown	<b>5. Earliest date employer had knowledge of injury or accident</b> Unknown	<b>6. Can disposition of this case be made without a formal hearing?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>7. Nature of alleged injury or occupational disease</b> Silicosis			
<b>8. This case is contested for the following reasons (State specific reasons and describe evidence relied upon and set out summary conclusions. The contestation must show valid legal objections to the payment of compensation.)</b> Carrier raises issues of Accident, Notice, Nature & Extent of injury; causally related disability, occupational disease, and all others.			
<b>9. Name of insurance carrier</b> Lumbermens Mutual Casualty Company		<b>10. Date of notice</b> 01/18/79	
<b>11a. Official's signature</b> A.O. Francis		<b>b. Title</b> Adrienne Francis/Clerical Representative	

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-0114  
(Judge Flannery)

STANLEY WILMES,  
*Plaintiff,*  
v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
*Defendant.*

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Washington, D.C.

Wednesday, November 3, 1982

**DEPOSITION OF DELMER ISON,**

a witness, was called for examination by counsel for the plaintiff, pursuant to Notice and agreement of the parties as to time and date, beginning at approximately 10:00 o'clock, a.m., in the law offices of Ashcraft & Gerel, Esquires, 2000 L Street, Northwest, Washington, D.C. 20036, before Norma Nasuti Costello, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

[2]

## APPEARANCE OF COUNSEL

*For the Plaintiff:*

ASHCRAFT & GEREL, ESQUIRES  
 By: WILLIAM F. MULRONEY, ESQUIRE  
 JAMES M. HANNY, ESQUIRE  
 2000 L Street, Northwest  
 Washington, D.C. 20036

*For the Defendant:*

HOGAN & HARTSON, ESQUIRES  
 By: VINCENT H. COHEN, ESQUIRE  
 ROBERT B. CAVE, ESQUIRE  
 SUSAN M. HOFFMAN, ESQUIRE  
 815 Connecticut Avenue  
 Washington, D.C. 20006

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Witness:

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Delmer Ison

Examination by Mr. Mulroney .....	
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Further Examination by Mr. Mulroney .....	
Further Examination by Mr. Cohen .....	

*Exhibits:*

Plaintiff's Exhibit Number 1 for Identification to the Ison deposition (Affidavit of Delmer Ison) .....	
Plaintiff's Exhibit Number 2 for Identification to the Ison deposition (Contract for Section A-6b, dated 6/17/76) .....	

[3]

Plaintiff's Exhibit Number 3 for Identification to the Ison deposition (General Provisions and Standard Specifications) .....	
Plaintiff's Exhibit Number 4 for Identification to the Ison deposition (Coordinated Safety Program & Re- porting Procedures) .....	

Plaintiff's Exhibit Number 5 for Identification to the  
 Ison deposition (Diagram—Construction Contracts)..  
 Plaintiff's Exhibit Number 6 for Identification to the  
 Ison deposition (Contract—Fruin-Colnon) .....  
 Plaintiff's Exhibit Number 7 for Identification to the  
 Ison deposition (Department of Design and Construc-  
 tion brochure) .....

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Defendant's Exhibit Number 1 for Identification to the  
 Ison deposition (Department of Design and Construc-  
 tion brochure) .....

Defendant's Exhibit Number 2 for Identification to the  
 Ison deposition (List of various subcontractors who  
 worked on A-6b) .....

Defendant's Exhibit Number 3 for Identification to the  
 Ison deposition (Specs of WMATA Coordinated In-  
 surance Program) .....

Defendant's Exhibit Number 4 for Identification to the  
 Ison deposition (Contract for Section A-6b, dated  
 6/17/76, with attachments: Coordinated Safety Pro-  
 gram, General Provisions and Standards, 1973) .....

Defendant's Exhibit Number 5 for Identification to the  
 Ison deposition (Section 4 of D.C. Code 1-2431) .....

[4]

Defendant's Exhibit Number 6 for Identification to the  
 Ison deposition (Section 12 of D.C. Code 1-2431) .....

Defendant's Exhibit Number 7 for Identification to the  
 Ison deposition (Opposition to Defendant WMATA's  
 Motion for a Protective Order) .....

Defendant's Exhibit Number 8 for Identification to the  
 Ison deposition (Notice of Deposition, date of service  
 9/18/82) .....

Defendant's Exhibit Number 9 for Identification to the  
 Ison deposition (Affidavit of Delmer Ison) .....

Defendant's Exhibit Number 10 for Identification to the  
 Ison deposition ("The Daily Washington Law Re-  
 porter") .....

Defendant's Exhibit Number 11 for Identification to the  
 Ison deposition (Construction Contract—Keith Col-  
 lier) .....

[5] (Thereupon, documents were marked as Plaintiff's Exhibit Numbers 1 through 7 and also Defendant's Exhibit Numbers 1 through 10 for identification to the Ison deposition.)

MR. COHEN: In the process of marking the documents for identification for the Defendant WMATA, the attorney for the defendant, WMATA, Mr. Vincent H. Cohen, wants it noted that Defendant's WMATA Exhibit No. 3, which is the specifications of the WMATA Coordinated Insurance Program, is a document that was furnished to counsel by the attorney for the plaintiff, and was also furnished to the Court as an attachment to the plaintiff's opposition to the defendant WMATA's motion for summary judgment.

I also note that Defendant's WMATA Exhibit No. 4, which is the Ball-Healy-Granite Contract, is a document that was furnished to counsel by the attorney for the plaintiff, and was also furnished to the Court as an attachment to the plaintiff's opposition to the defendant WMATA's motion for summary judgment.

[6] THEREUPON, DELMER ISON, a witness, was called for examination by counsel for the plaintiff, and after having been first duly sworn by the notary public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE  
PLAINTIFF

BY MR. MULRONEY:

Q Would you state your full name, sir?

A Delmer Ison.

Q And your home address?

A 5241 Yorktown Boulevard, Arlington, Virginia  
22207.

Q And your business address?

A 600 5th Street, Washington, D.C. 20001.

Q By whom are you employed?

A By the Washington Metropolitan Area Transit Authority.

Q In what capacity?

A I am secretary, and also I am acting director of claims.

Q How long have you been secretary of the Authority?

A Since 1967.

Q Since 1967 have you held any other positions [7] with the Authority other than secretary and acting director of claims?

A No, no.

Q Prior to 1967 by whom were you employed and in what capacity?

A I was employed as the executive director of the Washington Metropolitan Area Transit Commission.

Q How did you come to be appointed as secretary of the Authority?

A I was appointed by the board of directors.

Q What are your duties as secretary of the Authority?

A I serve as secretary to the board, and so I am in charge of the—at the present time I am in charge of the Authority's insurance program. Could I say one thing for the record? At the outset—I don't know why I forgot this—I was secretary/treasurer to the Authority from 1967. I would say about, oh, two years ago—I don't have the specific date—I, through a reorganization—the treasurer functions were transferred over to the controller's office.

Q As treasurer, what were your functions up until two years ago?

A I was in charge of the revenue collection for the [8] Authority, investments for the Authority, the normal treasurer functions of the Authority.

Q Were you involved in the payment of contractors involved in the construction of the subway project?

A I was not. Let's put it this way: checks were issued through my office, through the treasurer's office, to the contractors.

Q Who handled that function?

A That function was primarily handled by Pat Sestito, who was the assistant treasurer.

Q Mr. Ison, I want to show you a document marked as Plaintiff's Exhibit 1 and also Defendant's Exhibit No. 9 and ask if you can identify that document.

A Yes, I can.

Q What is it?

A That's an affidavit by Mr. Delmer Ison, me.

Q Do you recall preparing and signing this affidavit?

A I recall signing the affidavit, yes.

Q Do you recall preparing it?

A I did not prepare the affidavit. It was prepared for me.

Q Did you review the accuracy of the statements [9] contained in the affidavit?

A Yes. We reviewed the affidavit very carefully, as I would always do when I attach my name to an affidavit.

Q At the time you signed this affidavit were you aware that Mr. Wilmes was employed by the joint ventures of Ball-Healy-Granite on the A-6b project Fruin and Colnon on the A-11b project?

A I am not sure about the latter project. I had seen a lot of the litigation involved in this case. Name the last contractor.

Q Fruin and Colnon in Bethesda Station A-11b.

A Well, I am not aware of that one.

Q You were aware that he was employed by Ball-Healy-Granite?

A Yes.

Q I would like you to review statement No. 3 and tell me—elaborate the best you can—what you mean by that.

A I mean that—let me go—the compact created and gave to WMATA the contractual duty to build this 101-mile subway system.



We had several approaches we could take at the time. We could have hired our own crews. We could have maybe [10] selected one contractor to do the whole thing.

What we did do is we elected to split this 101 mile up in sections and subcontract it out to numerous contractors to build the system.

Q I am going to show you a document marked as Plaintiff's Exhibit No. 2 and ask you if you can identify that document.

A Just by looking at it, it apparently is the contract that we entered into with Ball-Healy and Granite as subcontractors to build a section of the WMATA system.

Q Did you sign that contract? It would be on the second or third page.

A I see where I attested to the name on the contract.

Q Do you have a recollection of signing this contract?

A No, I do not.

Q Did you review this contract before signing the affidavit in this case on August 19, 1982?

A My role in signing it—the purpose of my signature on the contract is to attest to the signature of the contracting officer.

MR. COHEN: So you [sic] answer is "no"?

THE WITNESS: No, no.

[11] BY MR. MULRONEY: (resumed)

Q I want to make sure you understood the question.

A Okay.

Q Did you in fact review this exhibit before you signed this affidavit on August 19, 1982.

A No.

Q Are you familiar with this type of construction contract?

A In a general sort of way.

Q Can you describe your familiarity?

A I am familiar with the fact that WMATA subcontracts the construction of a system to numerous subcontractors, and, of course, in attesting to these contracts, I am familiar generally with the format and so forth.

Q Mr. Ison, again asking you to go back to paragraph No. 3, what's your understanding of what a general contractor is?

A Well, I think a general contractor has a contractual duty to construct a project through numerous—by the use of numerous subcontractors.

In fact, I like the—in relating it to WMATA—I like the statement that I see in a case by Judge Green where [12] she says that WMATA is in the position of overall general contractor for subway construction in the Washington, D.C. area with responsibility of supervising numerous consultants, general contractors, and subcontractors.

. . . .

[13] Q In the context of a construction contract, what is a contract?

A Well, I think in the context of WMATA—and I might say that this is, I guess, the first time I have ever been involved with an agency that's involved in construction—a contract is document which, I guess, furnishes guidelines and controls of construction under that contract, if you are talking about a document.

Q Let me just ask you, is a contractor a party who enters into the contract to actually perform the construction work?

A Well, say that again.

Q I said, is the contractor the party to the construction contract that contracts to actually perform the work for a sum of money?

MR. COHEN: I don't mean to interrupt you, but let me just note—if you are going to go this way—a continuing line of objection to hypothetical situations, and an objection to the specificity of that question which doesn't assume whether it is the whole project or a portion of the [14] project, but he can answer if he can.

THE WITNESS: Well, again referring to WMATA, certainly it takes two people to contract, and I view WMATA as a general contractor who contracts with sub-

contractors to build a specific section of the Metro rail system.

BY MR. MULRONEY: (resumed)

Q Let's come back to the Ball-Healy-Granite contract for just a second. Prior to the signing of this contract, are you aware of the procedure for the preparation of the plans, the design, and the preparations of the specifications, and the bidding that all go on prior to the actual award of the contract?

A I think that question can best be answered by the contracting officer, who is the contracting officer of the office of design and construction. I do know that it is one of Metro's contractual duties to plan, design, and construct, and even operate the system. So I know there is a program there calling for planning, designing, constructing, and operation, in that order.

That is out of my area of responsibility in the Authority to do all that or even to be familiar with that.

Q Have you ever reviewed an invitation for the bid [15] of a project?

A Let me put it this way: Even in my area of responsibility, what you call INB, invitation of bids, I have reviewed some of those. I can't recall any specific contract that I reviewed in the construction area.

Q Let's take a look at the cover sheet of Exhibit No. 2. This is a contract for construction of three Metro stations, as I understand it: Cleveland Park, Van Ness Station, and Zoo Park Station; is that right?

A Yes, I see that on the front of it.

Q And the section number is called A-6b?

A Yes.

Q At the time that this contract was awarded what ownership rights did WMATA have in the properties upon which these excavations were to be built?

MR. COHEN: Well, let me object to the predicate for your question, which assumes that Ball-Healy and Granite did excavation work. There has been no testi-

mony that they were to construct the whole station nor is there any testimony that they were to do specifically excavation work. You can certainly clarify that with the witness.

BY MR. MULRONEY: (resumed)

[16] Q You can answer the question.

A Well, I was going to say this contract had another prior contract under which the tunnels were bored for the entire three stations. So the only work that this contractor did for Section 1AB—or whatever it is—A-6b, was to construct the constructional part of the three stations.

Q The question was: At the time this contract was awarded what rights did the Authority have in the locations in terms of ownership where the project was to be built?

A Well, in terms of ownership, we WMATA, has a right to acquire real estate for the purpose of building the station, the three stations, but that's not to say that WMATA is actually the owner of the finished product. WMATA is the contractor for the three jurisdictions and the federal government to build this system. We are not the owners of this system.

Q That's not what I asked you. At the locations where these stations were to be built—

A Yes.

Q —did the Authority have ownership rights in the property?

A WMATA had to—

[17] MR. COHEN: Hold it. I think he answered the question in the way that he can. As I understand his answer, what he is saying is WMATA acquired ownership rights in these stations in order to construct it. WMATA does not own it because it is owned by Maryland, Virginia, and the District of Columbia and the federal government.

Now, that's the kind of ownership he is describing, and I don't think he can change that. You can ask him to clarify it, but I think he has answered the ownership issue.

BY MR. MULRONEY: (resumed)

Q The WMATA compact gives the Authority itself the right to initiate condemnation proceedings, doesn't it?

A Yes.

Q Is it fair to say that prior to the issuance of the invitation to bid WMATA has completed its condemnation proceedings and has acquired title to the property where the construction is going to take place?

A Let me answer it this way: WMATA has to have possession of that property in order for the contractor—we have to give the contractor a right of entry to that property to build the station, but this does not mean that WMATA remains the owner of the finished product.

[18] Q In whose name is the condemnation proceeding initiated, if you know?

A It's in the name of the Authority.

Q At the completion of the proceeding what legal entity holds title to the property in question?

A The Authority—for purposes of naming a contractor to continue the construction—retains title to that property during construction.

Q On Exhibit No. 2 you testified in the affidavit and here today that Ball-Healy-Granite was a subcontractor of the Authority?

A Yes.

Q If you look at the front page of this construction contract, you see that Ball-Healy and Granite is referred to as the contractor; is that right?

A I see the word "contract" at the top of the page.

Q Who drafted this agreement?

A I don't know.

Q Was it the Authority who drafted the construction contract?

A I would assume it was, but I don't know.

\* \* \*

[19] Q Prior to coming here today have you reviewed this contract?

A I have not reviewed this contract as such, no.

Q Can you tell me what contract documents you have reviewed?

A I have not reviewed any contract documents. I have ascertained the number of subcontracts that were associated with the final product in building these three stations.

In other words, I ascertained the number of [20] functional contracts who report directly to the assistant general manager for design and construction in completing this section of the system.

Q To summarize where we have come so far, it is your testimony that in effect the WMATA compact itself makes the Authority a general contractor; is that correct?

A That is the way I interpret the compact.

MR. COHEN: I think he said a little bit more for the record, because they have the duty, he said, to construct a 101 mile system, and they can do it a number of ways, and they elected to subcontract it out to numerous subcontractors rather than forming their own construction company. That's my understanding of his testimony.

THE WITNESS: That's right.

BY MR. MULRONEY: (resumed)

Q Did the Authority prepare the specifications for the A-6b project?

A I assume it did.

Q At some point the joint venture, Ball-Healy and Granite, was awarded this contract; is that correct?

A I call it a subcontract in my terminology, yes.



Q This contract is for, as I understand it—and [21] correct me if I am wrong—the totality of the construction work that is going to be done on this entire project?

A No.

Q It is not?

A No.

Q All right, correct me.

A All right.

MR. COHEN: Excuse me. Just in fairness to you, Mr. Mulroney, he is referring to Defendant's Exhibit No. 2, of which I didn't provide you with a copy.

Do you have an extra copy of this?

THE WITNESS: Yes.

When a contract to a subcontractor is awarded—and I will relate it specifically to the 1A0062 section of the system—there is a contract awarded for soil testing.

BY MR. MULRONEY: (resumed)

Q Let's take them one at a time. The contract for soil testing, in relation to the date that this contract was entered into, when was the contract for soil testing entered into?

A I don't know. I ascertained in this contract precisely what subcontracts were awarded in order to complete [22] this entire section of the system.

Q Let me ask you one more question before we proceed. Would you agree with me that there is a very big difference between contracts entered into by the Authority for purposes of planning and designing the specifications and the contracts entered into for actual performance of the construction work?

MR. COHEN: I will object unless you can tell me what you mean by "difference." In money, in performance standards and safety requirements? I mean, I don't understand the question.

The witness can answer if he understands it, but I would like to know what you mean.



BY MR. MULRONEY: (resumed)

Q Do you understand the question?

A Well, let me say this—maybe I don't—but I don't like to compare the differences in these various contracts, but I can say this, that every single one of the subcontracts was a vital part of building these three stations in the system.

\* \* \*

[23] Q Second on the list says "tunnels." What is meant by that?

A A separate, independent subcontract was awarded to—and I don't know the name of the firm—to bore the tunnels for these three stations.

Q Well, isn't it a fact that the A-6a contract to which you are referring was a separate project section awarded to the contractor, Morrison-Knudsen and Associates, [24] several years before the Ball-Healy contract was entered into with the Authority?

A This—

MR. COHEN: Excuse me a minute, Del. For purposes of the record you made a reference—his reference here and on the exhibit is Section 1A0062. Are we talking about the same section? You said A-6a.

BY MR. MULRONEY: (resumed)

Q For purposes of elaboration, the tunnel boring machine had already dug the tunnel, and A-6b was merely the excavation of the three stations over and around the tubes that had already been bored?

A Let me put it this way: We've got our system broken down into sections. I think this is one of the largest sections in the system. Normally a section will only encompass one station. But as far as this particular project in the system is concerned, we look at the jobs being performed by these subcontractors as being part of that overall project to develop that section of the system. In other words, then the work they do is all considered to be one project as far as WMATA is concerned.

But all thees contracts were separate entities [25] among themselves in that each subcontractor had to report to the contracting officer for the Authority who was the assistant general manager of the section of the office of design and construction.

Q With regard to what you just indicated are tunnels, do you specifically know what that refers to?

A Yes.

Q What does it refer to?

A This is a separate firm—a separate firm was contracted with to bore the tunnels prior to the next subcontract, which is the work performed by Ball-Healy and Granite.

Q Do you recall that the firm of Morrison-Knudsen and Associates was the firm that did that work?

A I think I am aware of that only because of my general familiarity with the Authority. It is again out of my area of responsibility; but just having been exposed to the Authority as long as I have, I am aware of that.

Q In fact, didn't that contractor sign a contract essentially identical to the one that's been marked as Exhibit No. 2 here?

A Yes, I think I indicated that each one of these [26] documents represent separate subcontracts to complete construction of this section of the system.

Q Let's go down the list: architectural and engineering firm for each station.

A Yes.

Q What are you referring to there?

A I am not saying necessarily all in complete order, but the Authority selects a separate, what we call, A&E firm, to design each station or each part of the system. That's why in this case we had a separate—it is a separate contract, maybe the same firm, but I don't think it is. We have a separate A&E firm to design each station.

Q Essentially these contracts deal with, as I understand it, the preparation of the specifications and perhaps work change orders, things like that; is that right?

A As I understand it, the A&E firm designs the station; and the contractor who is going to perform the work under that will observe the A&E's firms specifications and plans for that station. That's a blueprint for them to complete their work.

Q Those contractors don't actually do any construction work, do they?

[27] A The A&E firms do not.

Q On Woodley Zoo Park, it says "finish." What does that mean?

A After the structural contract is completed, the ceilings, you might say, the platforms, the heavy structural work is completed. Then we contract separately with a firm to come in and finish off the station, put the tile, the finish work.

Again, John Egbert could tell you what goes into a finish contract.

Q The same thing for Cleveland Park and Van Ness; is that right?

A Yes, that's right.

Q Automatic train control, what does that refer to?

A Automatic train control, all of our trains are operated by what we call automatic train control. We have a separate control room. Each station must be equipped to tie in with the automatic train control, which is in the Authority's headquarters at 600 5th Street.

Again, what is involved in installing the necessary gadgets in order to enable the automatic train control center to communicate with each station, that's out of my field, but [28] basically that's what it is. Each station has to be equipped to communicate with the automatic train control center at the headquarters.

Q Well, the automatic train control, presumably the Authority would have already taken possession of the sites following completion of the contract work by Ball-Healy-Granite, wouldn't they, before that could come into effect?

A I am not—

MR. COHEN: I am sorry—I understand the question.

THE WITNESS: I am not sure I do.

BY MR. MULRONEY: (resumed)

Q At what stage of the construction work does the contract work for automatic train control come into effect?

A See, I am really not qualified to answer that question. I don't know whether it is—some of it may be done during the structural stage in order to put some of the wiring in. I don't know that question, at what stage.

Q Why don't you go down the rest of the list and tell me what's involved in those?

A Communications, of course, is what the word implies. Each train is equipped with radios, and it is a communication system which enables the train operators to talk back to [29] central control. The communications, of course, runs through each station.

The automatic fare collection is the automatic fare collection equipment that's manufactured in San Diego and installed in each station. Of course, this must be timed in a way to have the equipment in the station to enable fare collection at the time the station is opened.

The trackwork is laying the track on which the trains must operate.

The escalators enable people to come in and out of the stations. The elevators are primarily for the handicap to get into and out of the stations. By the way, these are all separate subcontracts.

The kiosks are the locations where the station attendants reside and pass out information to the public.

The next is substation equipment. That should really be procurement of substation equipment. That's a separate contract, and then we have a separate contract for the installation of that equipment after it has been procured.

The graphics are the signage in the system to enable the passengers—to tell the passengers which train to get on, and so forth, in order to get to where they are [30] going.

Landscaping is to repair any damage to the surface of the land in and around the station as a result of the construction activities.

The ancillary construction contract is really the last contract that is awarded to put a particular station or stations ready for operation. It is kind of a cleanup thing, where there may be leaks or cracks, little things left undone. It puts the facility in final shape for operation.

The four consultant contracts—of course, the general engineering consultant is the Deleuw Cather firm that at the very outset of the project are what we call “engineers of project.” The same with the general architectural consultant, who studies and recommends the design of stations, the broad general design of stations and their system.

The general construction consultant, Bechtel, they inspect the construction.

Loss control consultant is actually what I call the safety inspector primarily.

Q As I understand your testimony, you are in effect saying that any contractor to whom Metro awards a contract is in your opinion a subcontractor?

[31] A Yes.

Q Now, with regard to most of these things you have mentioned here, escalator, elevators, kiosks, trackwork, do you have any knowledge of whether these contracts are entered into before or after the Authority takes possession of the job site upon completion of the work by the joint venture Ball-Healy-Granite?

A I do not.

Q With regard to your contracts with designers, architects, engineers, landscaping, planning and designing, engineering, aren't all these contracts—don't all these

contracts involve the planning and specification work on the contract as opposed to the actual construction work of the project?

MR. COHEN: Let me object here unless you define "construction." I don't know much about construction, but I would like a definition of it, because it is my understanding that when you build a building and you hire an electrician, the work that he does is part of construction. When you landscape the ground, the work he does is part of the construction package, because you are putting something into shape.

[32] So if you could define construction, I think I would understand what you are getting at and he could respond.

BY MR. MULRONEY: (resumed)

Q It is my understanding that the construction work is defined in the contracts as "the work"; is that your understanding as well?

A Will you name again the firms you mentioned here? Did you name anything other than the four consultants at the bottom?

Q Well—

MR. COHEN: We will stipulate that each contract that has been let with each of these individuals contains the title, "the work," and the work that is contained is what they are supposed to perform for the Authority. Ball-Healy-Granite was supposed to do the structural. The tunneling people were supposed to do the tunneling. The landscaping people were supposed to do the landscaping. That is the work that they have been sub-contracted to do. We will stipulate to that.

BY MR. MULRONEY: (resumed)

Q With regard to the consultants, general engineering consultant, general architectural consultant, general construction consultant, the loss control consultant, do any of these [33] consultants who have entered into con-



tracts with the Authority perform the actual construction work?

A Not in my definition.

Q What's your definition?

A My definition is that the word "consultant," they plan, engineer, supervise, and so forth. I am talking about the general construction consultant.

Q Let's come back for a second to the construction contract, Exhibit No. 2, page 1, the contract by its own terms lists Ball-Healy-Granite as the contractor for the A-6b project, and the Washington Metropolitan Area Transit Authority is referred to as Washington Metropolitan Area Transit Authority; correct?

A Yes.

Q As you said earlier, you attested to Mr. Dodge's signature on this contract? Is that what you testified to?

A Yes.

Q To the best of your understanding, does the award of this contract to Ball-Healy-Granite make Ball-Healy-Granite the prime contractor on the A-6b project?

MR. COHEN: I am going to object unless you define "prime contractor." I don't know—

[34] MR. MULRONEY: It is defined in the coordinated safety program and reporting procedures manual.

THE WITNESS: You know, there is a lot of different, I guess, ways to define a contractor, subcontractor, prime contractor, general contractor, but it is my understanding and my testimony that regardless of what the label in these documents say that Ball-Healy and Granite, the joint venture, is a subcontractor to WMATA.

BY MR. MULRONEY: (resumed)

Q The question was, is Ball-Healy-Granite the prime contractor as defined in the coordinated safety program and reporting procedures manual, to your understanding?

MR. COHEN: Let me object and say that whatever the definition is it obviously speaks for itself. I think he has answered the question in terms of prime contractor,



and in his opinion Ball-Healy and Granite is a subcontractor.

Now, obviously we have to live with the documents. We are willing to stipulate that they are the contractor to perform the structural work along with many other contractors to do other things. If you want to say, are they the prime contractor to perform the structural work, I will say they are not only the prime contractor in the stipulation, but the only [35] contractor.

BY MR. MULRONEY: (resumed)

Q Isn't the Ball-Healy and Granite on signing this contract charged with the contractual obligation to actually perform all of the construction work for that project?

MR. COHEN: I am going to object. That hasn't been his testimony.

THE WITNESS: No. I am going to answer that no.

BY MR. MULRONEY: (resumed)

Q As set forth in the specifications in the contract.

A If you stated before the particular duties outlined in this document, I would say yes, but not to construct the entire project, no.

Q In terms of Ball-Healy-Granite's responsibility, Ball-Healy-Granite in turn subcontracted out a great deal of the construction work as presented in this contract to other subcontractors; is that correct?

A I am not familiar with that. I assume they did.

Q You are not familiar with that?

A No.

Q What's your understanding of the meaning of the word "subcontract" and "subcontractors"?

[36] A I think it is work performed for another contractor above it. We use the phrase at the Authority "subcontractors at all tiers." I understand—and I am not familiar with any specific contract—that there can be several tiers of subcontractors under a single contract.

• • • •

Q Well, in your affidavit you testified that Ball-Healy-  
[37] Granite is a subcontractor?

A Yes.

Q Is it your understanding that under the contract, A-6b contract, Ball-Healy-Granite has the authority to sub out the work subject to the Authority's approval of the subcontractor?

A That's my understanding, but I have no specific knowledge as to what they did in this contract.

Q Do you have any understanding as to whether there is any privity of contract between the Authority and Ball-Healy-Granite, subcontractors, on the A-6b project?

MR. COHEN: Let me object, because that calls for a legal conclusion, privity of contract, but I will indicate that we are willing to stipulate that whatever the contract contains in that vein is what actually happened, and the contract speaks to the fact that the subcontractors hired by the first subcontractor will have no relationship to the Authority.

We are willing to stipulate to the whole contract, because obviously we signed it, and it is in black and white, but I think this witness is not in a position to answer a legal question like, is there privity of contract. He is not here [38] in a legal capacity.

BY MR. MULRONEY: (resumed)

Q Is your understanding that WMATA has no contractual relationship with Ball-Healy-Granite's subcontractors on the A-6b project?

A It is my understanding that a subcontractor who contracts with another subcontractor has complete control over that company, except the Authority has to approve that subcontractor.

. . . .

[39] Q Let's come back to your understanding of the word "subcontract." Your testimony is that to your understanding subcontractor is any contractor who under-

takes to perform contractual duties for another contractor; is that correct?

MR. COHEN: Let me object, because we are getting out of context with whether you are talking about Metro or you are talking about a general definition of subcontractor. I think I will object, and I think he already indicated he can't answer the general definition.

MR. MULRONEY: Well, these words mean something. [40] You can't just define terms to suit your own purposes. In the construction trade the words mean something, and this is what I am getting at. I think I am entitled to ask his understanding and determine whether it comports with the general meaning of the words in the construction trades.

MR. COHEN: I guess my only objection is that he has given his definition of a subcontractor as being one who [has] a duty that a contractor has parcelled out. He is saying Ball-Healy and Granite has specific structural duties to perform, a piece of a larger project, and he then considers WMATA has the whole duty to perform the construction. His definition is a person with a discrete portion or a little portion to perform is WMATA's sub.

Now, you may disagree with that. The books may disagree with that, but I think that is his testimony, and it is a legal issue for a court to decide based on common and accepted practices whether this is correct or not, but I think he has already answered the question, is what I am saying.

You certainly, Mr. Mulroney, can ask it again if you think that it hasn't been asked and answered.

BY MR. MULRONEY: (resumed)

Q Do you have an understanding of what the word [41] "subcontract" means in the construction industry?

A I thought Mr. Cohen phrased it very well as far as I am concerned. It certainly implies that it is a small part of a much larger contract.

Q What contract—in what context is the word “sub-contractor” used to your understanding?

A It is used to denote that there are several, more than one function, under a larger contract.

\* \* \* \*

[43] Q Do you have any personal knowledge about how the joint venture, Ball-Healy-Granite, was awarded the A-6b contract?

A No, except generally the large construction contracts are awarded based on competitive bidding.

Q Are you aware that the term “general contractor” in the context of construction contract generally refers to that contractor who contractually controls the duties of the subcontractors on the job site?

A As I have said, I have testified that the compact created WMATA as a general contractor with contractual duties to subcontract with the authority—contractual duties to [44] build a system, and we elected to do it through subcontractors.

Q Another way of saying that is that you elected to award contracts involving specific sections of the subway system; is that correct?

A Well, in the terminology you use “contracts.” I say “subcontracts.”

Q It is your understanding that the Authority had the right if it wanted to utilize its own personnel on a job site to construct a contract; is that correct?

A I believe under the compact we would have the right to form our own construction crew.

Q Is it also your understanding that the Authority, if it chose to, could elect to retain the right to subcontract out work on each project itself rather than to leave that to the contractor awarded the contract for a specific section?

A Let's relate it to the case here. Are you saying that we would have the right to select subcontracts under Ball-Healy and Granite?

Q Not under that specific contract, but what I am asking you is, as I understand your testimony, you say you elected to do business this way?

A Yes.

[45] Q And you could have done it another way? You could have utilized your own crews to build the subway system; is that correct?

A I believe that's correct.

Q Is it also fair to say that you could have elected to retain contractual control over the subcontractors on a specific project?

MR. COHEN: Let me object. I think I stipulated—and I think the contracts will speak to that—they do retain contractual control over the subs via approval, via termination, and I think that testimony is in the record.

MR. MULRONEY: You are using the word "control" in a different sense. You are talking about supervisory control. I am talking about direct everyday right to control the work activities of the subcontractor.

MR. COHEN: I think this witness has testified that Mr. Egbert is the one that will tell you specifically what is done. The documents that are in evidence now clearly give the Authority the right to exercise total control over the project, and so does the compact. I think that's what he is saying.

BY MR. MULRONEY: (resumed)

[46] Q Let me ask the question again, because I do think I am entitled to have it answered: Is it your understanding that if WMATA elected to do so the very next project, subway project that was designed, could be constructed, built, with WMATA personnel?

MR. COHEN: Let me object to that on the grounds that it is hypothetical. Certainly you can answer it. I think he has already answered it.

THE WITNESS: I think it could.

BY MR. MULRONEY: (resumed)

Q And that it could also retain the right to subcontract out the work on each site?

A That's really what we do, subcontract out. We subcontracted out in this case, in this section. I think it is 25 contracts involved here.

Q Let me ask you, that is not a list of subcontractors, is it?

A It is a list of subcontractors to complete Section 1A0062.

MR. COHEN: By his definition, and his definition is WMATA subcontracts out discreet portions of the system and the sites. By his definition the contracting out of a discreet [47] portion under the overall supervision and control of WMATA makes WMATA the general, and the person who has the discreet portion a sub. And as I say again, that's the fact. Now, legally I think it is for a Court to determine, and I don't think he can determine it.

BY MR. MULRONEY: (resumed)

Q A-6b project was a large project, wasn't it?

A Yes, very large.

Q What was the contract price on that?

A I don't know.

Q It is on the first page of the document.

MR. COHEN: Well, let me object because that's only one portion of the project. In order for him to give you the total contract price, he has to add up all of those particular contracts, plus the consulting fees to determine the cost of the project.

BY MR. MULRONEY: (resumed)

Q Mr. Ison, this construction work that's mentioned in this contract, the contract price is \$70,000,933 and change; is that right?

A Yes.

. . . . .



[48] Q Well, isn't it a fact that Ball-Healy-Granite has control over the work activities on this contract?

A No.

Q It is not a fact?

A No.

Q Who has control over the work duties?

A Well, I know certainly the general construction consultant has a lot of control over it. The loss control consultants have a lot of control over it, and I assume Mr. Egbert could respond better than I. I assume that there are other controls. Certainly he exercised a lot of control over [49] this contract.

Q Without referring to the contract, what are you referring to? What experience are you talking about?

A Well, I will just give you one—and again I am not really the one to testify, but certainly the contracting officer has a right to shut this job down any time he feels that within his authority he needs to.

Q To come back to this contract, you are saying WMATA is the general contractor for the entire WMATA project?

A Yes.

Q Has WMATA entered into any specific construction contracts with either the jurisdictions of the District of Columbia, Maryland, or Virginia?

MR. COHEN: Let me object. I think he has answered that by saying that the compact is the contract with the jurisdictions. Now, are you saying is there anything in addition to that?

MR. MULRONEY: That's right.

MR. COHEN: You can certainly answer that, if you know.

THE WITNESS: We have entered into, I am sure, the service contracts with the jurisdictions.

[50] BY MR. MULRONEY: (resumed)

Q You are talking about construction contracts?

A I am not sure, and I can't recall any right off.



Q Do you have any personal knowledge as to why the Authority is not referred to as the general contractor in these documents?

A I have no knowledge of that.

Q Do you have any knowledge as to why the joint venture, Ball-Healy-Granite, is referred to as a contractor as opposed to a subcontractor?

A No.

Q Do you have any knowledge as to why WMATA chose to award construction contracts such as the one in front of you now as opposed to utilizing its own personnel to construct the system?

A No. I think that's out of my area.

Q To your own knowledge has the entire system been built the way that is reflected in this contract?

A I think the method in which this contract was awarded is certainly a pattern, to my knowledge, of how we go about constructing the entire system.

Q Do you have any personal knowledge as to whether [51] WMATA has on any Metro project utilized its own personnel to do the actual construction work?

MR. COHEN: I think here again you got to define "construction." Let me state my objection specifically. The person who actually digs may be classified as doing construction work, but just as equally as important is the person who inspects the project, the person who designs the project, the person who supervises the project from a safety and quality control standpoint.

You are limiting construction work to the person that actually does, as an example, the physical work, and I would submit, and I would be willing to stipulate that whoever the owners of Ball-Healy and Granite are, they have not performed any construction work. It is done basically by people they hire to do labor, so I think you got to define what you mean by "construction work," otherwise it is just not a sensible question, with all due respect.

BY MR. MULRONEY: (resumed)

Q Do you understand what the phrase "construction work" means?

A It certainly—if it is a very narrow interpretation, it is one meaning. But if it is a broad interpretation, [52] such as Mr. Cohen just stated, there are Authority employees that would be involved in construction work.

Q Do you have any personal knowledge of the way the term is utilized in the construction industry?

A No, I don't.

Q Back to a question I never got answered, in your opinion is Ball-Healy-Granite the prime contractor on the A-6b project as defined by the WMATA coordinated safety program and reporting procedure manual?

MR. COHEN: Well, let me object and say it was answered by virtue of the stipulation. We indicated that we are willing to stipulate that whatever the contract documents called Ball-Healy and Granite, they are. His testimony has been that they are basically a sub for a discreet portion, so I think you've got an answer to that. You have two answers: one via stipulation and one via his opinion.

MR. MULRONEY: I still don't have an answer to the question, I don't think.

MR. COHEN: Could you define "prime contractor"? If you mean by "prime," are they the general contractor on the project, I think he has answered that.

MR. MULRONEY: I mean as defined in the WMATA [53] coordinated—

MR. COHEN: All right. Let's turn to that, and let him look at it, and let's see if he can answer it.

BY MR. MULRONEY: (resumed)

Q Let me show you Exhibit No. 4, page 3, I think—

(A) (Witness examines document.)

MR. COHEN: We are willing to stipulate that what the contract says about Ball-Healy and Granite being the

prime contractor in relation to the items mentioned here, which is basically safety and accident prevention, is correct.

BY MR. MULRONEY: (resumed)

Q Is it your opinion that on the A-6b project and with reference to Ball-Healy-Granite subcontractors, that Ball-Healy-Granite is the general contractor for that project?

A I have already answered that. I consider it to be a subcontractor of WMATA.

Q You don't consider them to be the general contractor for that project?

A Not in my broad definition.

Q Just briefly take a look at Exhibit No. 5.

\* \* \*

[54] MR. MULRONEY: This is a schematic diagram from Collier on construction contracts, a 1979 book. It is a diagram from Section 1.2, and it represents the roles of the various entities on complex commercial and/or governmental construction contracts.

\* \* \*

[56] Q Mr. Ison, have you examined the diagram?

A Yes.

Q With reference to the dichotomy drawn between the design contract and the construction contract only.

A Well, WMATA clearly has combined the design work and construction work under the contracting officer authority. The office of design and construction is all included in one.

Q So that you feel that the setup at WMATA is materially different from the situation diagramed here?

A Yes, that is the first obvious difference.

Q Any others that you notice?

A Well, I would certainly—you mean just as dichotomy of the appearance?

Q Just with regard to the dichotomy between the design contract and the construction contract.

MR. COHEN: Well, I don't mean to interfere or cut you short, but it seems to me there is a threshold question that has to be answered here, and that threshold question is, is this in any way representative of the setup that the [57] Authority has utilized because we have their schematic in an exhibit, and it seems to me that whatever is to be made of this, the comparison can be made by the Court as to which is the appropriate way to go.

But I think we are wasting time trying to have this witness compare what this is, which we don't know, versus what WMATA does, but you can certainly inquire.

BY MR. MULRONEY: (resumed)

Q Why don't you answer Mr. Cohen's question?

MR. COHEN: I don't mean to be obstreperous, but I am really trying to make a very, very clear record, and it is really predicated upon the fact that you have alleged that this witness has misrepresented himself, and filed a Rule 60b3 motion.

I also interpret that to mean that combined with 60b3 is fraud, and I want to be very, very careful, since this witness has been accused in a Federal District Court of what I think is fraud and misrepresentation, that we have a very, very clear and nonfussy record, and that's the only reason for the detail and specific objections, but I don't mean to block you, and you certainly can ask him any question you want.

[58] THE WITNESS: Let me say this: As I said before, I am not the one to relate the organizational structure of the office of the Department of Design and Construction for the purposes of this deposition. Mr. Egbert is the contracting officer for the Department of Design and Construction and would be the one who is more knowledgeable and certainly knowledgeable with comparing the Authority with this schematic.

In my opinion if we were to try to substitute WMATA, even at the very top of this chart, I would say that the

owner would be classified as our jurisdictions, because they literally own the system. But beyond that, as to how the office of design and construction would be compared with this, I am not qualified to answer that question.

MR. COHEN: Do you intend, Mr. Mulroney, to introduce your Exhibit No. 5 into the record?

MR. MULRONEY: Yes.

MR. COHEN: Can we then at least for purposes of cross-examination see the book?

MR. HANNY: Off the record.

(Thereupon, an off-the-record discussion occurred, and then the deposition continued as follows:)

[59] MR. MULRONEY: For the time being I will withdraw the exhibit, in the interest of fairness, for the present time until such time as we find the reference book.

. . . . .

Q If I could take just a minute, I would just like to go through the general consultants that are contracted [60] by WMATA to do work on the subway system.

The general engineering consultant is DeLeuw Cather and Company?

A Right, yes, sir.

Q What services does that company perform?

A Again I don't want to appear to be evasive, but in order to have a direct answer, Mr. Egbert could give you the better answer, but they are the very first—they do the very first engineering on the job site for the entire system and try to help select where the routes are going to go. It is a very broad general engineering undertaking for the entire system.

Q In the normal course of things would they have performed design engineering work on the A-6b project?

A I don't know.

Q General architectural consultant is Harry Wieson Associates?

A Yes.

Q What service does the architectural consultant perform?

A They perform the architectural work for the system, and certainly they would lay the blueprint, the broad blueprint [61] for the makeup of the stations, the very broad pattern of how the stations will be later designed and built.

Again, Mr. Egbert would be the one to pinpoint precisely what their role is, but they definitely had a role in this particular contract.

Q The general soils consultant is User, Rutledge and Johnson?

A That name certainly rings a bell.

Q You are not familiar with them?

A At one time. I assume we still have them on board.

Q Do you know who the special designer was for Section A-6b project?

A No, I don't. You mean the special—you mean for each section?

Q Yes.

A No, I do not.

Q Is there a special designer assigned to each individual section?

A That is within the discretion of the contracting officer. Generally that is what we call an A&E firm that comes in and designs each station.

Q Is it fair to say that the consultants I have [62] mentioned performed work that results in the issuance of the contract documents for a specific section?

MR. COHEN: Is that all the—well, if you can answer it.

THE WITNESS: Well, I want to make sure you—



BY MR. MULRONEY: (resumed)

Well, with reference to A-6b, the Ball-Healy-Granite contract.

A Okay.

Q As I understand this, WMATA entered into contracts with these consultants who do a great deal of work and prepare the contract drawings, general provisions, the standards and specifications, special provisions.

A I can't answer that. That would be John Egbert's responsibility.

Q You don't know that?

A I don't know.

MR. COHEN: Also just to clarify the record, that's all spelled out in the exhibit that we put in called "The Department of Design and Construction," which tells you what everybody does.

. . . .

[63] BY MR. MULRONEY: (resumed)

Q. Mr. Ison, also in your affidavit, paragraph 4, you indicate that the subcontractors do not provide workers' compensation insurance for their employees, instead WMATA as the general contractor provides workers' compensation insurance for the employees of its subcontractors.

A Yes.

Q I think we have already established that WMATA has no contractual relationship with the subcontractors of Ball-Healy-Granite on the A-6b project?

MR. COHEN: We have stipulated basically to the fact of what's contained in the contract. However, Mr. Ison's use of the term "subcontractor" is specifically referring to Ball-Healy and Granite and all the tiers of subcontractors.

I think you have to ask him how he defines [64] "subcontractors," because I think he has already defined it, but you are now defining it as subs of Ball-Healy and Granite, and he maybe talking about Ball-Healy and



Granite and their subs. That's all we are saying.

I think there is a semantic difference.

BY MR. MULRONEY: (resumed)

Q Do you understand what we are talking about?

A Yes.

Q Would you explain paragraph 4?

A I am saying that WMATA is providing workers' compensation insurance as a general contractor for its employees and all subcontractors of WMATA down the line at whatever tier, that includes the subcontractors of the subcontractor of the subcontractor.

Q Would you explain for us the difference between Phase I on the Metro system and Phase II from the standpoint of the insurance scheme and the coordinated insurance program?

A Phase I consisted of a series of contracts, and I don't recall how many, under which the various subcontractors provided their own insurance coverage of which we are talking here.

Phase II—did you want me to explain the next [65] phase?

Q I would also like you to explain the time frame. How long did Phase I last?

A Let's see. I believe the coordinated insurance program was instituted about—I think it is—July of '71.

MR. COHEN: I am just letting him look at Defendant's Exhibit No. 3, which talks about the coordinated insurance program, to see if he can locate the time frame for you.

THE WITNESS: It is definitely '71. 7/30/71, as I recall. And the groundbreaking for the Metro system, which commenced Phase I was December 9, 1969, as I recall. I am not saying that we were awarded—a lot of contracts started at that time, but basically it was any work that was performed prior to July 31, 1971, would be under Phase I, and everything behind or beyond July 30, 1971, would be under the coordinated insurance program.

BY MR. MULRONEY: (resumed)

Q To be more exact, wouldn't it be contracts entered into before that time even though the work carried on after 1971 would be under Phase I?

A That's true.

[66] MR. COHEN: When you say: to be more exact, contracts entered into, do you mean—I just want to understand the question. That if a worker was injured on a Phase I contract, are you saying—is the question then that WMATA's comprehensive insurance program would not cover him. I am not sure I understand the question. Is that the question?

MR. MULRONEY: I thought it was fairly clear, but, yes, that is the question.

MR. COHEN: I am going to object on the grounds that that is an issue of law, that this witness clearly is not committed to answer, because under *Liberty Mutual v. Cardillo* in terms of which insurance company bears the brunt, it is clear by virtue of that Supreme Court decision, that it is the employer who is the employer when the injury manifests.

So, therefore, your question is legally not correct. And his answer, obviously, as a layman is not correct according to the Supreme Court.

MR. MULRONEY: I don't think that we understand each other.

BY MR. MULRONEY: (resumed)

Q On contracts entered into prior to July of 1971 [67] did the construction contractor in question continue to carry his own insurance for the life of his construction project?

MR. COHEN: If you know.

THE WITNESS: Well, let me answer it this way, which I do know: The coordinated insurance program, which incepted on July 30, 1971—

Q July what date?

A July 30, 1971.

MR. COHEN: I think I would say approximately.

THE WITNESS: Approximately. It covered the employees of all subcontractors at whatever tier of contracts entered into after that date.

BY MR. MULRONEY: (resumed)

Q Of your own personal knowledge, would you explain Phase II and the coordinated insurance program and the reasons for the inception of that program?

A Well, to commence with, we had a legal obligation to provide insurance coverage for all employees, for all contractors, subcontractors, at whatever tier; we had a legal obligation to provide workers' compensation insurance for these employees, and we were very much aware that going down the road there would be literally—it is hard to say— [68] hundreds of contract employees at subcontractor level up and down the line to be covered by insurance, which WMATA was responsible for taking out.

The primary reason we went to the CIP is because of this legal requirement to provide insurance, because we were well aware of the fly-by-night insurance companies who could cancel out of a given contract without any notice and leave the Authority bare, so we elected to make sure that the public was protected, that every employee was protected on this entire project, to adopt the CIP and put that program into effect, which included all employees on this project.

Q That's the reason for the inception of the program?

A That's the basic reason.

Q Any others?

A There are many as a result of that program which was put in to legally protect the employees. There were other benefits that flowed from it.

It was easier for us to administer a single policy of insurance for which a certificate of insurance was issued to every subcontractor on this job. It was easier for us to keep a record, and we have personal knowledge with

this one [69] policy in effect, that every employee on this project is covered.

In addition, another benefit that emanated from the program was that we were able to effect considerable savings in costs by buying insurance through one large insurance company.

I would say cost savings, ease of administration, which flowed from the primary purpose of legally protecting our employees on this project. One thing we did not want to happen—we were involved in spending a lot of public money and we were very much in the public eye, and we did not want to have a lot of employees—I heard the expression used—become a ward of the jurisdictions.

We wanted to make sure that each employee was fully protected and would be compensated in the event of an injury. That's basically it, why the Authority adopted the coordinated insurance program.

Q So your testimony is that the primary reason was concern over your legal obligation and second is administrative and financial?

A There is no question about that.

MR. COHEN: Also, I think he mentioned something [70] which you may have missed and the reporter may have missed, the fly-by-night insurance companies. I don't think he made that clear.

THE WITNESS: Yes. We were concerned—In other words, the burden is on us to make sure that every employee is protected at all times.

BY MR. MULRONEY: (resumed)

Q What led you to believe you did have that burden?

A The law itself. At the time it was the Longshoremen's Harbor Workers Act under which the Metro project, in D.C. certainly, was subject to. All the employees in D.C. on the project were covered by the Longshoremen Harbor Workers Act.

Of course, the compact itself required us to procure insurance and protect the public.

**Q** The compact doesn't contain anywhere in it a requirement to cover employees of contractors for workers' compensation, does it?

**A** It would have to be checked.

**MR. COHEN:** I think he said "protect the public."

**MR. MULRONEY:** I understand that there are provisions in there to protect property damage and things of that [71] nature.

**MR. COHEN:** Well, obviously the compact will speak for itself, but the basic tenet of the compact is to have a transit system built for the benefit of the three jurisdictions which will inure to the benefit of the citizens with the least amount of disruption.

I think his interpretation is employees, even though they are employees of contractors, are probably citizens of these jurisdictions. In order to protect them under the broad mandate of the contract, you use the insurance, but I think his basic tenet, as I understand it, is he had a legal duty.

**BY MR. MULRONEY:** (resumed)

**Q** Was this discussed at any meetings, this concern over your legal obligation?

**A** You mean back at—

**Q** At that time.

**A** Oh, yes. Oh, yes. My staff and I were very concerned about a fly-by-night insurance company going out of business and leaving without any notice to us, leaving the contractor and subcontractor, the employee, without any protection, leaving the contractor without any insurance.

[72] **Q** At the time were you a member of any committees that were involved in considering and drafting the coordinated insurance program?

**A** At the time I was in charge of the insurance program for the Authority. I don't know if I was a member of any committees or any official groups. I was just performing my duty as a staff member of the Authority.

Q Well, are there any records of these meetings concerning the drafting of the coordinated insurance program, to your knowledge?

A I might say this, we certainly gained some experience from the subway system of San Francisco. Several members of our board of directors went out to San Francisco. I went with them. It was to find out firsthand the nature of their program, what they call the wrap-up insurance program.

We certainly gained a lot of experience on techniques on how to put a program together as a result of that trip.

Q To ask the question again, were there any minutes of any meetings or any recorded documents in the possession of the Authority that would involve a discussion of the reasons for adopting the coordinated insurance program?

[73] A I don't know whether we—we certainly had meetings at our board meetings. We have minutes of our board meetings, which I am not immediately familiar. They cover the actions taken by our board in adopting the coordinated insurance program.

Q Were you present at those board meetings?

A Yes.

Q Do you recall discussing the concerns that you testified to here today?

A I don't recall. It has been about 11, 12 years ago.

Q Mechanically how does the contractor become covered under this coordinated insurance program since its inception in July of 1971?

A Basically the policy is written from, I guess, July 30 of 1971 until it is cancelled, which means it is in effect forever. It is an ongoing document that just never expired since its inception.

Any time a contractor comes aboard at any tier, a certificate of insurance is issued to that contractor, certifying that his employees are covered by this policy



of insurance issued by the Lumbermen's Mutual Casualty Company [74] covering all of his employees. It is a very automatic thing.

It remains in effect until that contractor leaves the job site.

Q Now, what coverage is included in this policy?

A Are we talking about the workers' comp policy in this conversation?

Q I am talking about all phases of the policy.

A Well, let's put it this way, the wrap-up includes three basic policies: workers' compensation, general liability, and builders risk. As far as workers' compensation, it specifically covers injuries sustained under the Longshoremen Harbor Workers Act, under the laws of Virginia, under the laws of Maryland and D.C.

Let me correct one thing, I don't believe it mentions specifically the Longshoremen Harbor Workers Act. I think it mentions the Workers' Compensation Act of the District of Columbia, which is and was until recently the Longshoremen Harbor Workers Act.

Q In the invitation to submit bids for a specific contract, does a contractor—the competing contractors, are they instructed in an invitation not to submit any bids including the cost of insurance?

[75] A I am not familiar as to whether they are told that or not. I really don't know. I know that they are told that the Authority will provide workers' compensation and the other types of insurance at its own expense, but I am not sure what the specs say in relation to the company providing insurance.

Q For example, on the Ball-Healy-Granite contract, Exhibit No. 2, mechanically how does Ball-Healy-Granite's subcontractors become insured under this program?

A It is my understanding the mechanics require that any sub who the contracting officer has to approve, that you put on that contract, on approval by the contracting officer, then a certificate of insurance is issued by the insurance company to that sub.



**Q** The certificate of insurance then is issued by Lumbermen's Mutual Casualty Company by virtue of WMATA's contract with Lumbermen's?

**A** Well, let me put it this way: The insurance policy that's issued, it makes—it wraps everything up in a ball. That's why it is frequently referred to as wrap-up insurance. It includes WMATA and all contractors on this project.

**Q** Well, Lumbermen's does not have any, as I understand it, contractual relationship with anybody other than the [76] Authority, does it?

**A** I am not really sure. This may get into a legal question, but it is my understanding that the contractors have the same relationship with LMC as the Authority does.

They are named on the policy. LMC is required to, I guess, defend that contractor.

**MR. COHEN:** For clarity of the record, this whole procedure is spelled out in the exhibits, which are the Ball-Healy-Granite contract, as to what the sub Ball-Healy must do, what the sub sub of Ball-Healy must do, how they must report, what their relationship is to the insurance company.

Mr. Ison may not have read that contract recently or at all. We are willing to stipulate that whatever is contained in those documents is an accurate representation of what goes on.

**BY MR. MULRONEY:** (resumed)

**Q** With regard to that wrap-up insurance policy, specifically with reference to the workers' compensation portion of it, can you explain the mechanics of how it works?

**MR. COHEN:** After a claim is filed? I just don't understand you.

**BY MR. MULRONEY:** (resumed)

[77] Q In terms of how the policy is paid for.

A Basically it is very much like any normal insurance policy that's issued on an annual basis. The insurance premium rates are negotiated at the beginning of each year, and we try to estimate what the total costs of that year of the injuries are going to be for that year in advance.

We negotiate with LMC as to what the total premium would be, and we make the total premium payment in monthly payments to LMC. Then—

Q What occurs—

MR. COHEN: Okay, finish, Del.

THE WITNESS: Obviously we take into consideration—we work very closely with the Department of Design and Construction in order to find out what the construction schedule is so that we will know exactly how many new jobs are coming on line, and so forth, how many new subs will be coming on line, and so forth, so that we can get a handle on the total costs of contemplated injuries on that job or on the jobs, so that we will have some basis for agreeing on a premium.

BY MR. MULRONEY: (resumed)

Q What happens in the event that you estimate low and you ended up paying more money than the loss?

[78] A I might say we have had both situations where we have overestimated and underestimated. If we have underestimated and there are additional costs, we have what we call a contingency insurance fund sitting there to make up any deficits for that year.

Similarly if there is an—if we overestimate, and along in the year we see that the costs are not materializing, then we will agree with LMC to waive a monthly premium in order to bring it more in line with the actual cost.

We have got a fund to pay additional costs, and we have a way of having LMC agree to waive a monthly premium in the event the premiums are excessive.

I might say that they [sic] way we gauge this is we agree that we should keep LMC funded on a continuous basis at a level of 120 percent of the estimated cost of the claims. We have a cushion built in of 20 percent above the actual cost. This is to take care of any emergency loss that might be unusual, sudden emergency loss.

MR. COHEN: For the record, Mr. Mulroney, can you have Mr. Ison define what he means by "cost" and "estimated cost"?

Do you mean claims, Mr. Ison?

[79] THE WITNESS: Estimated cost of the claims, of the workers comp claims.

BY MR. MULRONEY: (resumed)

Q How is LMC paid its profit margin?

A LMC is paid a total fee—right now it is—well, due to the curtailment in construction, I think it has gone down by \$200,000 a year. Up until now it has been a million six per year as a flat fee for their profit. That not only includes their profit, but it includes all their administrative costs and the whole works, the million six.

Q Is it fair to say that in effect this is a form of self insurance?

MR. COHEN: I haven't heard any testimony from the witness that this is a self insurance. I heard about a premium being paid, but you can certainly answer the question.

THE WITNESS: In my opinion this is not a self insurance program. If the Authority went out of business tomorrow and something happened to the money that we have got set aside to pay claims, and for some reason that money was then suddenly not available to pay claims, LMC would be on the line to pay all outstanding losses without question.

So far as LMC is concerned, it is not a self [80] insurance program. As far as the contractor is concerned, it is not a self insured program. They are issued policies

calling for all claims above—well, I started to say above \$1—from \$1 up.

There is no deductible listed in the policy. It says the employees will be paid this workers' compensation from \$1.

Q Assuming in the case of Exhibit 2, Ball-Healy-Granite subcontracts electrical work, and assume that it is Walter Truland Company, and Walter Truland has a workers' comp policy with Aetna, is that other coverage superseded at the time they enter into their contract with Ball-Healy-Granite to work on a Metro site?

A Are you saying is a policy that the Authority has taken out supersedes the other policy?

Q Right.

A I don't know. All I know is that we have issued a policy to protect the Authority. We don't have to rely on any other insurance which may be provided.

Frankly, in the way we operate I am never aware of what other coverage a contractor may have taken out.

MR. MULRONEY: I don't have anything else.

. . . .

[81] EXAMINATION BY COUNSEL  
FOR THE DEFENDANT

BY MR. COHEN:

Q Mr. Ison, the first thing I would like to ask you about, if I may, is your affidavit, which is Defendant's Exhibit 9, I believe, and Plaintiff's Exhibit 1. The first question is: This is your affidavit, is it not, sir?

A Yes, sir.

Q And you signed this under oath; that is, you were subject to penalties of perjury and you were sworn to tell the truth; is that correct?

A Yes.

Q Did you read over this affidavit very, very carefully before you signed it?

A Yes, sir.

[82] Q When you signed it, am I correct in my understanding that what you represented here is the truth as you know it?

A Yes, sir.

Q Did you intentionally at any time in terms of signing or approving this affidavit misrepresent anything in this affidavit?

A No, sir.

Q Did you at any time attempt in signing this affidavit, or did counsel at any time in showing you and preparing this affidavit, attempt or indicate that this was going to be a fraudulent document, a document used for the purpose of deceiving the Court?

A No, sir.

Q To the best of your understanding and knowledge, everything you mentioned in this affidavit is absolutely true?

A Yes, sir.

Q You were questioned by Mr. Mulroney about paragraph 3 of the affidavit in which you said that WMATA as a general contractor has contracted with private construction companies as subcontractors to build the WMATA subway system; is that true, sir?

[83] A Yes, sir.

Q And in response to one of Mr. Mulroney's questions you mentioned the fact that the compact had that WMATA was created by the compact to construct this system for the three jurisdictions; is that correct?

A Yes, sir.

Q And the three jurisdictions you were referring to are Maryland, Virginia, and the District of Columbia?

A Right, sir.

Q Does this compact and its enabling documents require WMATA to construct a 101-mile system?

A It requires WMATA to construct a system. Its board of directors, pursuant to the WMATA compact mandate, planned, designed and engineered the 101-mile system.

Q Does Ball-Healy and Granite—who you referred to in this case as a subcontractor—have the responsibility to construct the entire Metro system?

A No, sir.

Q Does Ball-Healy and Granite have the responsibility to construct the entire site on its Section A-6b?

A No, sir.

Q Am I correct in my understanding that all Ball-  
[84] Healy and Granite has been contracted to do is to do the structural work on A-6b?

A That's correct.

Q After Ball-Healy and Granite finished their work on Section A-6b, could any person in Maryland or Virginia or the District of Columbia ride a subway at that site?

A No, sir.

Q Would it be fair for me to state that that site was not finished at the time that the structural work was finished?

A Right.

Q Would it be fair for me to state that before that site could become operational, that many other contractors had to finish their work?

A Yes, sir.

Q These are contractors, much like Ball-Healy and Granite, who you WMATA subcontracted with to perform a certain function?

A That's correct.

Q Referring you to Plaintiff's Exhibit 2, which lists the subcontractors, as you called them, on the Metro system, would it be—

MR. MULRONEY: I believe that's a defendant's  
[85] exhibit.

BY MR. COHEN: (resumed)

Q I'm sorry; Defendant's Exhibit No. 2, which lists the subcontractors on the Metro system, would it be fair for me to state that each subcontractor listed—and I



count one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, approximately. I am not holding you to the number—was an indispensable part to the preparation of that site?

A Yes, sir. Let me explain one thing, this information was provided me by a responsible official in the office of design and construction, and I can certainly say that each one of these contracts was an essential part to this whole project.

Q Before construction can begin, the Authority subcontracts in the same contractual form as they did with Ball-Healy and Granite to have the soil tested; is that correct?

A Yes, sir.

Q Now, I don't know the total sequence—

A Ask that question again. Let me make sure we get this correct.

[86] Q Does the Authority before Ball-Healy and Granite comes on to the site subcontract to have the soil tested?

A Yes.

Q Before the structural work that Ball-Healy and Granite did in this contract can be done, is it necessary and did the Authority subcontract to have tunnels done?

A Yes, sir.

Q Now, the Ball-Healy and Granite subcontract calls for a payment of \$70 million for building the structure of three stations; is that correct?

A That's correct.

Q Did they do anything else on the job to your knowledge?

A To my knowledge, no.

Q Did they do any tunneling?

A No, sir.

Q Now, you have no idea how much the subcontract for tunneling was, do you, sir?

A No, sir.



Q You have no idea how much of the \$70 million that was paid Ball-Healy-Granite related to the total cost of the development of this site, do you?

[87] A No, sir.

MR. MULRONEY: Objection. I am going to object on the basis that it is plainly in the records that I already submitted to you that the tunneling work was a separate contract and involved a totally separate amount of money.

MR. COHEN: That's what I said. Excuse me, Mr. Mulroney. I don't mean to mislead you.

BY MR. COHEN: (resumed)

Q The tunneling contract was a separate contract with a separate sub—it was a separate contract with a separate company to do tunneling; is that correct?

A Yes, sir.

Q The structural contract was a separate contract with a separate company named Ball-Healy and Granite to do structure work; is that correct?

A Yes, sir.

Q The finish work involved three separate contracts with three separate companies to do finishing work; is that correct?

A That is the information that was furnished to me by the office of design and construction.

Q The finish work involved finishing off the station [88] or what does that involve, sir, can you tell us?

A That generally is the work involved in getting the station ready for use by passengers.

Q The tunneling work is basically work in which a construction company would come in and remove dirt, et cetera, and build, shore-up, and do what we normally think of being done in making a tunnel?

A Yes, sir.

Q And Ball-Healy and Granite can't put up the station structure until the tunneling is done?

A That's correct.

Q In terms of supervision and control, does the Department of Design and Construction of Metro supervise, control, and monitor the soil testing contract to your knowledge?

A Yes, sir.

Q Does the Department of Design and Construction supervise, monitor, and control the tunneling contract?

A Yes, sir.

Q Does the Department of Design and Construction supervise, monitor, and control the station structure contract?

A Yes, sir.

[89] Q Or the Ball-Healy contract, as we have been referring to it?

A Yes.

Q Would it be fair for me to state that in terms of Defendant's Exhibit 2 the Department of Design and Construction performed all of the functions outlined here in terms of supervision, monitoring, and control of each sub-contract that's been let at this site?

A Yes, sir.

Q To your knowledge, is the Department of Design and Construction considered your general contracting arm?

A Yes.

Q And does the Department of Design and Construction, as we leave this site, A-6b, and move to other sites, do they in essence perform the same functions and monitor, control, and supervise the contracts at each site at which this system is being built?

A Basically that's true. Of course, in some station locations there may not be tunnels involved. But assuming that everything is present, why that's true.

Q Is it your position when you call WMATA the general contractor, that you are saying that each person who gets [90] a contract from WMATA, even though they might be called contractor, in essence only assigned a

small portion of the site work, and that the overall responsibility in supervision and control of that site and its varying contractors rests with WMATA?

A Yes, sir.

Q Is it further your testimony as to why they are a general contractor, that Ball-Healy and Granite has no responsibility for doing anything on this site or any other site—well, now let us talk about this site on this particular site in which Mr. Wilmes was injured—other than the structural construction?

A That's my information.

Q If that site is never prepared, if the tunneling is messed up, if the escalators don't work, if the finishing is done improperly, Ball-Healy and Granite has no responsibility for that?

A That's my understanding.

Q The only thing that Ball-Healy and Granite is responsible for in terms of this A-6b site is to do the station structure under the controlled supervision and direction of WMATA?

[91] A Yes, sir.

Q You were asked a question, and you indicated that in your opinion under the compact WMATA could put together its own construction company to do the various things that had been outlined in Defendant's Exhibit No. 2; is that correct?

A Yes, sir.

Q My question to you, sir, is: Am I correct in assuming that one of the reasons that they did not in essence create its own construction company is because after the system was constructed, what would you do with it? Was that ever considered?

A I don't know, Mr. Cohen, why they didn't do that.

Q But there would be a problem, am I correct, that after the station is constructed, you would then have a construction company with no mission?

A That's true.

Q Are you saying that the various subcontracts that you call subcontracts of the subcontractors on A-6b are an integrated part of an overall project that is the construction of site A-6b?

A Yes.

Q And that each subcontractor is controlled by WMATA [92] who is responsible for integrating and seeing that that site is prepared and ready for operation?

A Yes, sir.

Q I don't mean to be repetitious, but Ball-Healy and Granite has no responsibility in terms of the integration and overall finishing of that site?

A No, sir.

Q You have testified in response to some questions by Mr. Mulroney that WMATA has to acquire the site in order to enable the contractors to have access to these sites to do their particular work; is that correct?

A That's right.

Q Now, you also testified that the Authority does not own those sites and the sites are owned by the jurisdictions; that is, in the event of a bankruptcy or a breakup, you, being on the board of directors of WMATA, I assume, could not, as an owner, take the site and use it for your own purposes, could you, sir?

A No, sir.

Q And you, as on the board of directors of WMATA which runs the company and technically should own the land, could not, for example, mortgage that land without permission— [93] well, strike that question, because I think you can mortgage it to raise money.

In the event that the system is shut down, do any of the members of the board of directors have a right to divide up the system to liquidate it and to keep the money personally as you would do if you owned a home and you sold it?

A Not according to my understanding.

Q Would it be fair for me to state that the land that you get is land that you obtain in order to live up to your contract with the jurisdiction that is to construct the station?

A Yes, sir.

Q And that you hold that land as a trustee for the jurisdictions?

A Correct.

Q And you cannot dispose of that land in any way other than the way outlined in the compact?

A Correct.

Q If you actually own that land, would it be fair for me to state that you would have no restrictions if you were the actual owner of the land?

A That would sound reasonable.

[94] Q In terms of your testimony as to what you are, what you consider WMATA, you used what has been marked as Defendant's Exhibit 10, the language of Judge June Green, and you say you would adopt this position.

She says that WMATA is in the position of overall general contractor for subway construction in the Washington, D.C., area with the responsibility of supervising numerous consultants, general contractors, and subcontractors; do you ascribe to that?

A That's the concept I do, yes.

Q Are you aware that all contractors of whatever level on the projects on the sites at WMATA must attend weekly or monthly meetings presided over by the assistant general manager for construction? Are you aware of that?

A I am not aware of that.

Q Could you tell us who Mr. John Egbert is?

A John Egbert is the assistant general manager for design and construction.

Q Is he in essence the head of the Department of Design and Construction?

A Yes, sir.

Q Is he also referred to as the contracting officer?  
[95] A Yes, sir.

Q I know you have testified that you can't recall whether you read the contract at issue, that is, the contract between Ball-Healy and Granite and WMATA. You were asked the question: Do you know why Ball-Healy and Granite was called a contractor? And I think your response—and correct me if I am wrong—was that you don't know; is that correct?

A That's correct.

Q Do you know why Ball-Healy and Granite was not named a general contractor?

A I don't know.

Q But is it a fact that they are not called general contractor on the document in question?

A That's correct.

Q Back to the Ball-Healy and Granite contract, Defendant's Exhibit No. 4, Mr. Ison, and more specifically referring you to the general provisions and standard specifications for construction of the project, which is made a part thereof, and more specifically referring you to paragraph 57 on GP-18, which is entitled "Authorized representative of the contracting officer," subparagraph A, are you aware that in this contract there is the clause that says, "The work [96] will be conducted under the general direction of the contracting officer. The engineer is the authorized representative of the contracting officer with authority to take all actions authorized herein which can lawfully be taken by the contracting officer, including the following," and then there is a whole list of things that the contracting officer or his authorized resident engineer can do.

Are you aware that there was that section in these contracts?

A I can't say I was specifically aware. I have general knowledge, but I was not specifically aware of that.



Q But is it your understanding that the contracting officer runs the particular job, each job on the project?

A That's the purpose of the contracting officer concept at the Authority.

Q You mentioned, Mr. Ison, two sections of the WMATA compact, and they were Section 4, which is Defendant's Exhibit 5, and Section 12, which is Defendant's Exhibit 6, and I think you stated that you were created by this compact with the authority to construct the total subway system; is that correct? You may not have mentioned these sections, but is that correct?

A Yes, sir.

[97] Q I am now showing you Defendant's Exhibit 6, subparagraph 12, is that the section that you were referring to in terms of giving the Authority the right and the duty contractually to construct this system?

A Yes, sir.

Q Is Section 4 the section that you were talking about that you were created under by virtue of the compact entered into by the three jurisdictions?

A Yes, sir.

Q You were asked some hypothetical questions about building. Let me ask you a couple of hypothetical questions. Assuming you were the general contractor to build a building, and I, the general contractor—we are talking about an office building—said to you, Mr. Ison, the plumber, "Would you put in some plumbing fixtures for me?"

And you, the plumber, said, "Well, do you want me to do the electrical? Do you want me to do the rod work?"

I said, "No. I just want you to do the plumbing."

In that hypothetical, Mr. Ison, would the plumber be a general contractor or a subcontractor?

A Subcontractor.

Q When you tell Ball-Healy and Granite "I want you [98] just to do the structural work," and Ball-Healy and Granite says, "Do you want me to do some tunnels for you?"

"No."



"A little soil testing?"

"No."

"A little finish work?"

"No."

"Put in some escalators?"

"No."

"Put in some elevators?"

"No."

"Do some kiosks?"

"No."

"A little substation equipment?"

"No."

"A little landscaping?"

"No."

"A little graphics?"

"No."

In that situation would you describe Ball-Healy and Granite as a general contractor or a subcontractor?

A That's a subcontractor.

[99] Q Let's talk about the insurance program. In your affidavit, Mr. Ison, you indicated that the subcontractors—I am talking about paragraph 4 of Defendant's Exhibit 9. We can share a copy if you want—you indicate that the subcontractors do not provide workers' compensation insurance for the employees, instead WMATA as general contractor provides workers' compensation insurance for employees of its subcontractors; is that correct?

A Yes, sir.

Q You also indicated in response to Mr. Mulroney's questions that this CIP or wrap-around program which provides this insurance came into being around July 30, 1971, in Phase II of the construction project; is that correct?

A Yes, sir.

Q First query is: WMATA pays the money for this insurance coverage; is that correct?

A Yes.

Q The subcontractors do not; is that correct?

A That's correct.

Q Is there anything to prevent a subcontractor from carrying his own workers' compensation insurance?

A Not as far as the Authority is concerned.

[100] Q The Authority does not—let me ask you this: Does the Authority say to a subcontractor, "Because we have got insurance for you, you can't get insurance, and that's a mandate"?

A No, sir.

Q There are specifications to your CIP program which have been outlined, and I am referring you to Defendant's Exhibit No. 3, which is also an attachment to the plaintiff's motion to supplement their opposition to defendant WMATA's motion for summary judgment in the Wilmes case, and on the the front page of that it says, "The contractors may at their own expense and effort obtain any other insurance they deem necessary." Is that a true and correct statement of the Authority's position?

A Yes, sir.

Q This exhibit, which is really the plaintiff's exhibit attached to their motion for summary judgment also says on page 6, paragraph G, "There is no other type of insurance and no higher limits than those described herein. Any increase in limits of liability for any other type of insurance not described above, which the contractor or any of his subcontractors obtain for their own protection or [101] because of statute, shall be their own responsibility and at their own expense." Is that a correct statement of the Authority's position?

A Yes.

Q Do you infer from that, sir, or would it be fair for me to infer from that they can certainly get their own insurance if they wanted to pay for it?

A That's correct.

Q On page 5 of the said exhibit, which is Defendant's Exhibit No. 3, it says, "The insurances by WMATA, except for the all risk cost of construction insurance, ap-

plies only to the operations of and for each contractor at and from the construction site and any other approved site. It does not apply to the operations of any contractor in his regularly established main or branch office, factory, warehouse, or similar place, nor to any employees of such operation."

Am I correct in my understanding that this is pursuant to your testimony that you insure the subcontractors, the sub subcontractors, and all their employees when they are on the WMATA site working on a discreet portion of the WMATA project?

A Yes, sir.

[102] Q Now, you were around during Phase I of the construction when the insurance program really was that each sub got his own insurance; is that correct?

A Yes, sir.

Q And you had some experience as a result of that Phase I; is that not correct?

A Yes, sir.

Q Did you ever have the experience of a subcontractor's insurance covering his employees being cancelled and the Authority not being aware of same?

A I can't recall any specific instance right now. Just based on my general knowledge, I think the records will show that we did, but I have no specific recollection of that.

Q If the subs took out the insurance as they did in Phase I, was there any responsibility of their insurance companies to notify the Authority in the event of cancellation of a workmen's compensation contract?

A Read that question to me again.

Q I am trying to find out, Mr. Ison, is in terms of your Phase I experience before CIP came in, did you find that the insurance companies who insured the subs also as a matter of courtesy notified the Authority and kept some [103] communication with the Authority so they

can keep control over this insurance whenever there was a problem with the workmen's insurance coverage?

A Yes.

Q Did they do that?

A Let me say this, about the only time—we would get notice, but we never did know that we got all the notices; because if they didn't give us notice, we just wasn't aware of it.

Q Was one of the reasons that you went to a wrap-around is to assure that you would know that there was insurance that employees of all the subs and sub subs were covered and you would have better centralized control?

A Absolutely.

Q Was another beneficial purpose of this wrap-around insurance your ability to assist minority contractors in obtaining contracts?

A Yes.

Q Could you elaborate on that?

A Well, we concluded early on that in view of the limits that we required, that we felt should be required, for a project this size, that minority contractors simply could [104] not participate in our program unless the insurance was provided for them, out of sheer cost, not only minority contractors but small contractors.

Q Is there a minority contracting program in effect at Metro which you are mandated by statute to live up to?

A Yes, there is, and I would have to call on Mr. Egbert to explain it, but I think generally it is about in the 12 to 15 percent range on construction contracts that minorities have to participate.

Q Would it be fair for me to state that the benefits flowing from the CIP program was, one, you fulfilled your legal duty; two, you had better control; three, it was more cost effective; four, it helped the employees of con-

tractors, subs, and sub subs being insured; and, fifth, it helped minority contractors?

A Yes, sir, all those are the reasons.

Q When you put this program into place, before you did it did you at least check out some other public transportation systems, and see what they were doing?

A Yes.

Q Can you tell us, does any other public transportation system in the United States have the CIP or wrap-around [105] program?

A I can say from personal knowledge that there is no subway construction program in the United States that do not have a wrap-around insurance program.

Q So this system is not unique to the Washington, D.C., area, is it, sir?

A That's correct.

Q And other jurisdictions who have subway construction ongoing all use this program for the reasons that have been stated?

A Yes, and I would like to say one other reason: I really don't believe that a program of this size where you have hundreds of contractors insured could be prosecuted under today's insurance market, because I don't believe the insurance money market is available to insure hundreds of contracts up to \$50 million limit. I just don't think it is there.

Q Let me go to the issue of legality. To your knowledge have any of the jurisdictions which have this program, have they ever been charged by the United States Attorney's Office, any state workmen's compensation authority, any Department of Labor authority, with doing something illegal by having this program?

[106] A No, sir.

Q Since the inception of this program in 1971 more than 11 years ago, have you received any complaints from any attorney who has accepted fees under this program?

A No, sir.

Q Have you received any complaints from any claimants who have accepted money under this program?

A No, sir.

Q Have you received complaints from the United States Attorney's Office?

A No, sir.

Q Have you received complaints from anyone at the Department of Labor?

A No, sir.

Q Do you have—has there even been a letter saying, "Well, maybe this is illegal. Maybe you ought to look into the legalities of this"? Other than the allegations made in this series of cases, have you ever had anyone complain about this?

A At the very outset—let me say this—in adopting the program, there was a lot of opposition by various small entities, brokers, et cetera, that stood to be impacted by this [107] program. But since the program has been in, I don't recall any letters of any such type.

Q Would it be fair to characterize these small brokers or small insurance companies as objecting to this because they are going to lose money?

A Absolutely.

Q One of the purposes of this program is to save the public dollars?

A Yes, sir.

Q And not to make the brokers and the small insurance companies rich?

A Right.

Q If the plaintiffs really wanted to find out the specifics of the operation of the general contracting arm of WMATA, would it be fair for me to state that chapter and verse could probably be delivered by Mr. John Egbert, the assistant general manager?

A Yes, sir.

Q For example, if they wanted to know why WMATA didn't have permits or licenses, or what contractual meetings they participated in, or how much control was exercised by WMATA and its employees, and what WMATA

employees were doing [108] in the field, the appropriate person to have gotten this information from would have been the assistant general manager for design and construction, who is the head of the Department of Design and Construction?

A Yes, sir.

Q To your knowledge has Mr. Egbert's deposition ever been taken by the plaintiff's attorneys in this case?

A Not to my knowledge.

Q To your knowledge has he ever testified in any evidentiary hearings at which these plaintiffs' attorneys were involved?

A I know he has testified, but not to my knowledge.

MR. COHEN: Well, to make a clear record, I would like a stipulation of counsel that they are aware of Mr. John Egbert, aware of his position, and have examined him under oath at other hearings.

Can we stipulate to that?

MR. HANNY: On a separate issue.

MR. MULRONEY: I know you don't care about the stipulation as to what it was about, but I will stipulate we examined him on the issue of Bechtel's agency to WMATA, but on nothing else.

[109] MR. COHEN: Let me move to strike that because my stipulation is that you knew of his existence, that he was assistant general manager of design and construction, that you have examined?

MR. MULRONEY: Well, I am going to object to your motion to strike. I think that the purpose of the examination was limited. We did not discuss any of the issues involved herein during the course of that direct examination and cross-examination.

BY MR. COHEN: (resumed)

Q If one wanted to find out who the board of Metro or who the officers were, is that a public record accessible to the public?

A Yes.



Q So if an attorney was interested in the construction operation of the Metro system and wanted to know whether they were a general contractor or what, there is a public record he could go to and find out who the assistant general manager for design and construction is; is that correct?

A Yes, sir.

Q And that department is called the Department of Design and Construction; is that not correct?

[110] A That's correct.

Q Let's talk about cost for a moment, Mr. Ison. I assume that WMATA is interested in keeping its costs down; is that not correct?

A Yes.

Q And I assume, especially in the time that the federal government is cutting back and inflationary times, that you were not interested in paying more money to insurance companies, employers, claimants, then [sic] you have to; is that a fair statement?

A Certainly that is a fair statement.

Q When you estimate the cost of these claims, would it be fair for me to state that if during a period of time following estimation, you find that one subcontractor on one job site is generating claims that is costing the Authority enormous amounts of money, that in all probability that contractor would be terminated under your powers of the contract?

A We would certainly have the right to and would take some action to either have it corrected or get rid of the contractor.

MR. MULRONEY: I am going to object to the question. I think the contracts will speak for themselves. And I do not [111] believe that the Authority has any power to terminate a subcontractor under them, only individual employees of a subcontractor.

MR. COHEN: Well, let me just clarify that now and find the clause, if I may. Let's take a brief break.

\* \* \* \*

Q To your knowledge, does the Authority have the right—and let's talk about the Wilmes case—did the Authority have the right to terminate Ball-Healy and Granite's subcontract, I will call it, if they were dissatisfied with the quality of work, the safety aspect of the work, or any other term or condition spelled out in the contract?

A It is my understanding that they do, but that question is better answered by Mr. Egbert.

Q Okay. And/or the contract?

A And/or the contract.

Q Back to the cost of claims. Is the Authority concerned about the safety of employees of the subcontractors and the sub subcontractors, and the sub sub subcontractors?

A Very definitely so.

[112] Q Is that because there is an economic and a moral reason?

A Yes. I would even go stronger than that; I would view it as the responsibility of a public official, almost a legal responsibility to make sure that the public funds are protected.

Q If Ball-Healy and Granite or any sub of Ball-Healy and Granite—

(Short interruption.)

BY MR. COHEN: (resumed)

Q Mr. Ison, let me just see if I can ask you a couple final questions. You are a member of the board of WMATA; is that correct?

A No. I am a staff of WMATA. I'm an officer of WMATA, let's put it that way.

Q If it came to your attention as an officer of WMATA that a subcontractor like Ball-Healy and Granite or a sub sub or a sub sub sub of Ball-Healy and Granite was not concerned about the safety of their workers, would it be fair for me to state that you, as an

officer of WMATA, would attempt to take appropriate corrective action which might even lead to termination of the contract?

[113] A Yes. It so happens that I am—since I am involved in insurance programs, that I do have an interest in the safety, and we would certainly institute appropriate investigations to see what was going on.

Q So if a sub or a sub sub displayed an obvious and a callous disregard toward the safety—and, of course, those words are subject to definition—but if it was really very, very clear, in a smoking-gun kind of situation, would it be fair for me to state that that sub, or that sub sub, would jeopardize his economics in terms of performance of the contract?

A I understand that if that situation was called to the attention of John Egbert, that he would take appropriate action to redress the situation.

Q These claims in this \$1.6 million that you have in the past been paying Lumbermen's Mutual Casualty, these funds, are they public funds?

A Yes.

Q Do they come out of your construction budget?

A It comes out of the construction budget.

Q So would it be fair for me to state that for every claim on money that's paid in public funds to a claimant, [114] there is less money to construct this system?

A Very well put, and I tried to make that argument with our top management down there. That's why we should have a good safety program, to keep the cost of claims down.

Q This construction money, this public money, it comes from the jurisdictions in the federal government?

A Yes, sir. The locals put up a certain percentage and the feds match that.

Q This is not money that is expected to be recaptured much like in a profit-making venture, is it, Mr. Ison?

A No.

Q The construction of the subway system is for the public good?

A I would hope so.

Q And WMATA does not hold itself out as a profit-making entity much like—maybe not true now—but PanAm, and TWA, and IBM?

A No, sir.

Q And others. Mr. Ison, you currently run the insurance program?

A Yes, sir.

Q You have done so since when, sir?

[115] A Since the inception of the Authority.

MR. COHEN: Before I let Mr. Ison go, Mr. Mulroney, I want to move certain documents into evidence, and I may need him if you have any objection. So with your permission—or do you want to finish your redirect, and then we can deal with that, or would you rather do it now?

MR. MULRONEY: You can do it now.

\* \* \* \*

MR. COHEN: The defendants are going to move—not into evidence—but at least into the deposition for attachment as part of our record of this deposition, Defendant's Exhibit Numbers 1 through 10.

So I do that. I am going to package them up and hand them to you; and you can state any objections you have, Mr. Mulroney, on the record.

#### FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. MULRONEY:

Q Mr. Ison, when Ball-Healy-Granite was in the process of completing its contract, what does WMATA do prior to taking possession of the job site?

[116] A I hope you understand I really don't know. I just have a very general idea, but I know they are very

careful before they release the contractor from all further responsibility, and I know that sometimes—and the reason I know this is because the insurance is involved—we have what we call completed insurance, and they are very careful not to release a contractor from that job until everything has been thoroughly checked out, but really Mr. Egbert could address that.

Q But upon an inspection and acceptance of the work, the Authority does take possession of the job site, don't they?

A Well, I don't know whether "possession" is the proper word. I will say that I know the contractor is in effect given a release from any further responsibility on that contract. I don't know whether possession actually changes because the contractor is given a release.

Q The contract document would control in that regard?

A Yes, yes.

Q You said that Ball-Healy-Granite was in your opinion a subcontractor assigned to do structural work?

A Yes.

Q I haven't asked your opinion—what do you think structural work is?

[117] A You know, in this contract, to be quite candid, I am not sure. Generally construction work has to do with building the—

MR. COHEN: Structural work.

THE WITNESS: —inverts where the rails are laid, the walls, the ceiling, the platform, and that's just about it. Just the structural work.

I will give a good example, one everybody sees. If you take the National Airport, a lot of people would say that that's just structural work, but actually there was two contractors: structure, built the structure, and then the finished product. So just pure concrete and steel, the pure structure, is about all the structural contractor does.

BY MR. MULRONEY: (resumed)

Q Do you have any knowledge as to whether Ball-Healy-Granite actually excavated those stations in addition to providing structural supports?

A I have no knowledge on that. I was told by the officer and responsible official at design and construction that the tunnels for this section were bored separately, and I don't know what he really meant when he said that.

[118] Q There is a big difference between the tunnels, that is the tubes where the trains now run, and the stations where the people get off and exit from the cars and get on the cars?

A That's right.

Q And this contract with Ball-Healy-Granite was for the excavation of three very large—we know because they are open now—Cleveland Park, Zoo Park and Van Ness stations, was for the excavation of the station itself, wasn't it?

A I really am not going to answer that because I really don't know. I think Mr. Egbert ought to answer that question.

Q The contract will speak for itself.

A That will speak for itself.

Q I am going to show you one further exhibit, and I am going to mark it as Plaintiff's Exhibit No. 8.

(Thereupon, the document was marked as Plaintiff's Exhibit 8 for Identification to the Ison deposition.)

BY MR. MULRONEY: (resumed)

Q Can you identify that document?

[119] A It says page 13. I really don't know where it came from.

Q Let me show you page 1 of the document. Do you have any idea what that document is?

A I really can't say, and I'm not trying to evade your question. I simply don't know the purpose of the document or what it purports to—what role it purports to play.

Q See if this refreshes your recollection. If I were to tell you that that document is showing all the contractors and their subcontractors covered under the Phase II coordinated insurance program, does that refresh your recollection?

A I will tell you why it doesn't. I don't think I have ever seen the contractors listed in a single document under the coordinated insurance program.

MR. MULRONEY: I will withdraw the exhibit then.

BY MR. MULRONEY: (resumed)

Q Do you have any personal knowledge as to how many subcontractors Ball-Healy-Granite had on the A-6b project?

A No, sir, I don't.

Q Do you know what kind of subcontractors they subcontracted with?

A No, I don't.

[120] Q Did you ever visit the site in your tenure as treasurer or secretary?

A Yes. I am not sure I have been in all the stations, but on a regular tour I have been there. I have been through one of those stations out there.

Q Coming back to the rights the Authority has in the land on which the subway project is built, is it fair to say that the Authority does have an ownership right in that property?

A They have ownership rights as far as getting title to the land in order to allow the contractor to commence his work, yes.

Q In other words, they are not absolute rights; they are limited rights; is that correct?

A Well, again—and I hate—but the Department of Design and Construction has a big office of real estate and they handle all this.

Q You testified that you went to San Francisco to observe the BART system?

A Yes.



Q Did you have any discussions out there with any officials of BART system as to whether they consider themselves [121] general contractors or owners of the project in question?

A No, not to my knowledge.

Q When did you first come to the conclusion that WMATA was a general contractor on this Metro project?

A When the question was first raised in reviewing the manner in which we go about doing this.

Q When was that?

A Well, I guess the first time the question came up was when we prepared the affidavit.

Q Is it your function at WMATA to deal in the—to deal generally in lawsuits either by the Authority or against the Authority in your function as secretary and/or treasurer?

A Well, I can answer that no. I think I have testified in my 11, 12—actually I have been with the Authority 15 years—I think I only testified two or three times. Usually it is left up to each contracting officer for each department.

We have seven departments in the Authority. Each one of them has a contracting officer: finance, general administration, government relations, counsel, you know.

. . . .

[122] Q You testified a few minutes ago that WMATA is not a profit-making organization; is that correct?

A That's correct.

Q So in effect your testimony would be that WMATA is a non-profit-making general contractor created by statute?

. . . .

[123] THE WITNESS: I can't say we are characterized as a non-profit organization. Let me explain exactly what I have in mind. Our annual deficits for our operations approximate \$165 million, so obviously we are not making money, but I can assure you we are not chartered to be a non-profit organization.

MR. COHEN: Let me object unless the question is phrased in the context in which he responded. The question we talked about is the recapture of capital expenditures in the construction fund.

In every profit-making organization in the United States of America when capital funds are expended, they are expected to be recaptured. And his question is going to just a general characterization of the operational side as distinguished from the constructional side.

I will object to the question unless you either break it down to operation or construction, because I think there are two arms to this entity under the compact.

[124] THE WITNESS: That's true.

BY MR. MULRONEY: (resumed)

Q Let's go back just for a second to your testimony that in 1970 and '71 when the CIP was being instituted, that you were very concerned about your statutory obligations to pay for workers' compensation benefits.

At the time of the institution of the CIP, did you or anybody associated with WMATA, to your knowledge, consider the applicability of Section 904a of the Longshoremen's Harbor Workers Act? Are you familiar with that section?

A Yes.

MR. COHEN: You can answer that, but let me object on the grounds that the appropriate individual in legal matters concerning the Authority is the general counsel's office, and he is the secretary.

You can certainly ask him what he considers; but in order to make a clear record, I want you to understand that the Authority's legal position is always articulated through its general counsel.

You can answer that, if you can.

THE WITNESS: I was just going to say I am not even sure at that time about 904 particularly, but I was [125] very much aware.

Our general counsel's office certainly was very, very instrumental in this whole thing at the beginning as to what workers' comp laws we were to comply with. They concluded that we were under the Longshoremen's Harbor Workers Act.

BY MR. MULRONEY: (resumed)

Q They concluded that the Metro construction would be jurisdictionally covered by the Longshoremen's Harbor Workers Act?

A To the extent the contractors were domiciled in the District of Columbia, and at that time I understand that even some of the contractors that were outside D.C., because of union agreements, were subjected to the Longshoremen Harbor Workers Act.

Q You testified just earlier that you really first concluded that WMATA was a general contractor just several months ago?

MR. COHEN: That's not his testimony. You asked him when he first was considered, and he said several months ago.

MR. MULRONEY: I said when did he first conclude that WMATA was the general contractor, and he said several [126] months ago.

MR. COHEN: I think in fairness to this witness you have to ask him if pre several months ago was WMATA the general contractor or not, because people don't put labels on themselves until they are asked.

THE WITNESS: That's what I tried to say.

BY MR. MULRONEY: (resumed)

Q Well, absent the label of contractor or general contractor, what liabilities would WMATA have for the procurement of compensation under Section 904a?

A Absent the what?

Q Absent the status of contractor or general contractor, what legal obligation would WMATA have to pay? You testified that you were very concerned about WMATA's obligations 12 years ago?

A As the law was interpreted to me by our general counsel, interpreting the Longshoremen Harbor Workers Act, the Authority was legally responsible to provide workers' compensation insurance coverage under the wrap-up for every employee on this project, subcontractors at whatever tier.

We had a legal responsibility to do this, and one of the reasons we put the wrap-up in was to make sure that we [127] could meet this legal responsibility, and avoid having this situation where fly-by-night insurance companies would cancel out without our knowing about it; and we knew if we could have one policy to cover all these entities, including all their employees, that we would have full control over our legal responsibility.

Q When you were out in San Francisco observing the BART system, did you learn how that system was supervised and monitored?

A I believe they have a contracting officer pretty much like we do, but I can't—because I wasn't out there for that purpose. I was out there to find out how the coordinated insurance program functioned.

MR. MULRONEY: That's all I have.

#### FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MR. COHEN:

Q One correction for the record. Mr. Ison, Mr. Mulroney asked you what do you think the structural work entails; and as I recall you [sic] answer, you said "construction" work entailed. I assume you meant to respond to this question of "structural" work. Is that correct?

A That's what I thought I said.

\* \* \* \*

[128] MR. COHEN: Let's go off the record for a moment?

(Thereupon, an off-the-record discussion occurred, and then the deposition continued as follows:)

MR. COHEN: It is hereby stipulated between counsel that in light of plaintiff's counsel utilizing Plaintiff's Exhibit No. 5, the schematic from Collier's, in light of defendant's counsel's concern about the accuracy, quality, weight, evidentiary value of this particular document, which comes from a book called "Collier on Contracts," that the defendant's attorneys have the right to transmit to both counsel for the plaintiff and to the court reporter for inclusion in the record as Defendant's Exhibit No. 11, any portion of Collier's that they deem relevant to those issues, and to any issues that the schematic pertains to.

Is that correct, Mr. Mulroney?

MR. MULRONEY: That's fine.

BY MR. COHEN: (resumed)

Q Mr. Ison, since the beginning of the construction has it always been your understanding that Metro had the contractual duty to construct the entire system; do you understand the question?

A Yes. Yes, it has.

[129] MR. MULRONEY: I am going to object to the use of the term "construct." Construct through WMATA personnel or through other people?

MR. COHEN: Let me make it clear, as I understand Mr. Ison's testimony, he said that the compact was the contract that gave the duty to WMATA to construct this system, and that WMATA could do it a number of ways: ergo, forming their own construction company, et cetera, but they decided to do it by a series of contracts, but I think that testimony is in the record.

My only question to him is, was that his understanding at the inception of the compact? Obviously the compact speaks for itself. I am trying to get his understanding. Did he at any time ever feel—

BY MR. COHEN: (resumed)

Q Let me ask it this way: Did you at any time ever feel since you have been at Metro that the duty to construct the entire system rested with some other entity?

A No.

. . . . .

[130] Q Are you aware in terms of one of Mr. Mulroney's questions about possession of the site, that the subcontractors such as Ball-Healy and Granite by virtue of their contracts must warrant the quality of their work on that site for one year, and can be forced to return at any time to correct any deficiencies within that one year; are you aware of that contract provision?

A I am not aware of that.

Q Are you aware that the contract contains a provision for simultaneous contractors on the site at the same time?

A I am not aware of that.

Q To your personal knowledge do you personally know whether there have been contractors simultaneously on a job site at the same time?

A I am sure there has been, obviously because much of this work of Exhibit 2 has to commence before the prior work is finished.

MR. COHEN: I have no further questions. Off the record.

. . . . .

[132] CERTIFICATE OF THE DEPONENT

I have read the foregoing pages 5 through 131, inclusive, and find the answers to the questions therein contained to be true and correct, with the exception of changes, if any.

/s/ Delmer Ison  
DELMER ISON

Dated: Nov. 9, 1982

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CERTIFICATE OF NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME this  
9th day of November, 1982.

/s/ Lora D. Graves  
(NAME)

NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

My Commission Expires: Jan. 14, 1985

[SEAL]



## [133] CERTIFICATE OF NOTARY PUBLIC

I, NORMA NASUTI COSTELLO, a Notary Public in and for the District of Columbia, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in Shorthand at the time and place mentioned in the caption hereof and thereafter reduced to typewriting under my supervision; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/ Norma Nasuti Costello  
NORMA NASUTI COSTELLO  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

My commission expires: August 14, 1984

ERRATA SHEET OF  
DELMER ISON DEPOSITION  
TAKEN ON NOVEMBER 3, 1982

Page	Line	As Transcribed	Changed to
6	18	president	Secretary
16	6	constructional	structural
16	14	in	and
16	15	They	We
30	7	cooperation	operation
58	10	jurisdiction	jurisdictions
60	10	roots	routes
79	7	to	by
127	1	—	add "meet" before "this legal responsibility"

/s/ Delmer Ison  
DELMER ISON  
Dated: Nov. 9, 1982

CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF    )  
                  ) ss:  
COLUMBIA        )

Subscribed and sworn to before me this 9th day of  
November, 1982.

/s/ Lora D. Graves  
Notary Public  
District of Columbia

My Commission Expires: Jan. 14, 1985

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 81-0114  
(Judge Flannery)

STANLEY WILMES,  
*Plaintiff,*  
v.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY,  
*Defendant.*

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Washington, D.C.  
Wednesday, November 3, 1982

DEPOSITION OF DAVID L. SEWALL,

a witness, was called for examination by counsel for the plaintiff, pursuant to Notice and agreement of the parties as to time and date, beginning at approximately 3:15 o'clock, p.m., in the law offices of Ashcraft & Gerel, Esquires, 2000 L Street, Northwest, Washington, D.C. 20036, before Norma Nasuti Costello, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

[2]

APPEARANCE OF COUNSEL

*For the Plaintiff:*

ASHCRAFT & GEREL, ESQUIRES  
By: WILLIAM F. MULRONEY, ESQUIRE  
JAMES M. HANNY, ESQUIRE  
2000 L Street, Northwest  
Washington, D.C. 20036

*For the Defendant:*

HOGAN & HARTSON, ESQUIRES  
 By: VINCENT H. COHEN, ESQUIRE  
 ROBERT B. CAVE, ESQUIRE  
 815 Connecticut Avenue  
 Washington, D.C. 20006

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I N D E X

<i>Witness:</i>	<i>Page</i>
David L. Sewall	
Examination by Mr. Hanny .....	
Examination by Mr. Cohen .....	
Further examination by Mr. Hanny .....	
Further examination by Mr. Cohen .....	
 <i>Exhibits:</i>	
Plaintiff's Exhibit Number 1 for Identification to the Sewall deposition (Affidavit of David L. Sewall) .....	

[3] THEREUPON,

DAVID L. SEWALL,

a witness, was called for examination by counsel for the plaintiff, and after having been first duly sworn by the notary public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR  
THE PLAINTIFF

BY MR. HANNY:

Q Mr. Sewall, could you give us your full name, sir?

A David Lee Sewall.

Q Your present address?

A 15109 K-A-M-P-U-T-A Drive, Centreville, Virginia, 22020.

Q Mr. Sewall, what is your present position with NATLSCO?

A I am the branch claims manager of the Fairfax, Virginia, office.

Q What area do you work? Do you work in the workmen's comp side or liability side, if I can use that term?

A I am the branch claim manager; and as such, I would be responsible both for liability and compensation, auto, fire [sic] theft.

Q How many adjustors do you have working under [4] you directly in that area?

A I have eight adjustors working for me.

Q How long have you been with NATLSCO?

A NATLSCO itself, I have been with NATLSCO since 1975.

Q How long have you been in the Washington, D.C., area with NATLSCO?

A Since 1975.

Q By the way, NATLSCO is a subsidiary of Kemper?

A NATLSCO is a subsidiary of Kemper Corporation.

Q When was it incorporated or created?

A What, the Kemper Corporation?

Q No; this is NATLSCO.

A I have no idea.

Q Was it created specifically to adjust the workers' compensation third-party liability claims brought as a result of the Metro subway project?

A No.

Q What was the purpose of its creation?

A Oh, NATLSCO, National Loss Control Service Corporation, is a subsidiary of Kemper Corporation and was created, as far as I know, for multi purposes for self insurance.

[5] Q For self insureds?

A For self insureds.

Q Is Metro a self insured, in your opinion?

A In my opinion, no.

Q What would you classify it as?

A I would classify it as an insured, because they have an insurance policy with Lumbermen's Mutual Casualty Company.

Q Where else does NATLSCO operate, Mr. Sewall, other than in this area?

A In all 50 states of the Union, plus in Japan.

Q Do they function in a similar capacity, let's say, in the subway project underway in Atlanta, Buffalo, New York?

A I have no idea.

Q You are just familiar with operation here in Washington, D.C.?

A Yes.

Q How long have you been with Kemper overall?

A I joined Kemper in 1964.

Q In what capacity?

A As a claim adjustor.

\* \* \* \*

[6] Q Mr. Sewall, what is your understanding of the term "general contractor"?

A My understanding of the term "general contractor" would be one who would have the power to control a construction project and to hire parties that may aid them in a construction project.

Q Is it your understanding, sir, that a general contractor in many instances would contract out with specialized [7] companies to perform special work, such as electrical, plumbing, heating and air conditioning, tile work?

A Yes.

Q Things of that nature?

A Yes.

Q What is your understanding of the term "prime contractor"?

MR. COHEN: Well, let me just note an objection here. Certainly he is going to answer all your questions, but his affidavit uses the term "subcontractor." It doesn't use "general" nor "prime."

Obviously I think it is fair to inquire about general since sub flows from that, but I think when you get—my objection only flows to the fact that he has not been qualified as an expert in the use of contractual terms, and I think "prime" is perhaps a word of art.

But with that objection noted and noting it is outside the scope of the order, you can certainly ask him.

THE WITNESS: "Prime" I believe in the English language means first; and as such, that's what I would understand prime contractor to be. It would be the first contractor.

BY MR. HANNY: (resumed)

[8] Q Would you equate the term "prime contractor" with "general contractor"?

A No.



Q So just for clarification purposes, are you saying that your understanding at least of a prime contractor is one who initiates the contract in the beginning?

A I don't understand what you are—I understand prime to mean first, and that would be the first contractor.

Q The first contractor?

A That's what it says, prime contractor, first contractor.

Q How do you distinguish that then from a general contractor, just for clarification?

A General contractor would have the—to me—overall sayso. He may hire somebody else down the line as a subsidiary to give him assistance.

Perhaps a prime and general may be interchangeable. I don't know. I am not a contractor. I am a claim man.

Q Of course, this is just your interpretation or your understanding, Mr. Sewall. What is your understanding of the term "subcontractor"?

A Sub would mean—it comes from the English word [9] meaning below. Therefore, a subcontractor would be below the prime contractor.

So you would have your prime contractor, which means first contractor; subcontractor which means below contractor or below the prime contractor.

Q Within your understanding of the meaning of the subcontractor, could you give me an example of a subcontractor?

A Subcontractor would be, for example, an electrical contractor, if I were to hire a contractor to put some electricity in a house I was building; if I were acting as my own general contractor, he would be my subcontractor.

Q Would it be your understanding, Mr. Sewall, that a company who had a speciality of putting in tile, let's say, on a deck, could be considered a subcontractor?

A I would say so, yes.

Q Would you consider a company with a specialty in underground electrical work such as Tunnel Electric, could be a subcontractor?

A Yes.

\* \* \*

[10] Q Are you familiar with or do you have any knowledge of the fact that WMATA, Metro, is alleging a status of general contractor?

A I have that knowledge, yes.

Q Do you understand the legal implications of such a title?

A No.

\* \* \*

[16] Q Prior to this date, August 20, 1982, what was your understanding as to WMATA's title in terms of how they would classify it?

A WMATA's title?

Q Yes, sir.

A WMATA's title was Washington Metropolitan Area Transit Authority.

[17] Q That wasn't really my question. What I am saying is that prior to August 20, 1982, was it your understanding that WMATA was a general contractor, an alleged general contractor?

A It was my understanding that WMATA had responsibility for building the entire subway system.

Q Was it your understanding that WMATA was a general contractor?

MR. COHEN: Let me object and note for the record that the term "general contractor" is never used in this affidavit.

THE WITNESS: As I stated, my understanding is that WMATA had the responsibility for building the entire subway system. If that's a general contractor, then, yes, that's what my understanding of them was.

BY MR. HANNY: (resumed)

Q Well, prior to the date that you signed the affidavit, did the subject of WMATA being an alleged general contractor come up?

A I can't recall whether that came up or not.

Q What was your understanding prior to August 20, 1982, [18] as to what Ball-Healy-Granite was?

A That they were a prime contractor?

Q A prime contractor?

A Yes, Sir.

Q With what duties and responsibilities?

A I am not sure what their duties and responsibilities were. I do know that Ball-Healy-Granite was a prime contractor for Section A-6b, I believe it was.

Q Which was the excavation of three large stations known as: Woodley Zoo Park, Cleveland Park, and UDC Van Ness Station; is that correct?

A I believe that is correct.

\* \* \*

[19] BY MR. HANNY: (resumed)

Q The question I had, Mr. Sewall, is that the tube boring, the actual boring of the tubes that the train runs in had already been completed by another corporation, correct, sir, if you know?

A This is correct.

Q Other than the excavation work on the three stations known as A-6b by Ball-Healy-Granite, what other general functions did they have as prime contractor?

MR. COHEN: If any.

THE WITNESS: I have absolutely no idea what their other functions were.

BY MR. HANNY: (resumed)

Q Is it your understanding that there were other companies, contractors, that performed specialty work on those stations either concurrently when Ball-Healy-Granite

was doing their work, or, you know, at the end of the excavation, or towards the ends of the excavation?

A This is my understanding.

Q What is your understanding of some of the names of those companies, just off the top of your head?

[20] A I would hate to venture to tell them off the top of my head, because under the Metro system there were hundreds of contractors working, and some may have been working on A-6a, A-6b, FA6. Just which ones worked on which projects, I have no idea off the top of my head.

Q There were companies that performed speciality work; is that correct, Mr. Sewall?

A Some of them performed specialty work, yes, sir.

Q Does the name Tunnel Electric ring a bell in terms of a company that worked on A-6b doing specialized work?

A I can't say that Tunnel Electric worked specifically on A-6b. They may have.

Q What was the relationship, if you know, between those companies that we just talked about and the joint venture of Ball-Healy-Granite?

MR. COHEN: Let me object here because the witness has indicated that he doesn't know if any of those companies worked on the project, and, therefore, if he doesn't know that as a predicate, he obviously can't know the relationship, because it hasn't been established that those companies worked on the project.

For that reason I will object.

[21] BY MR. HANNY: (resumed)

Q You may answer.

A That they may—if Tunnel Electric did work on A-6b, they may have been a subcontractor to the prime contractor on the project.

Q So let's assume arguendo that Tunnel Electric worked at some portion or at some time on three stations known as A-6b, would you or was it your understanding

that that company, assuming that that company worked there, was a subcontractor?

MR. COHEN: Let me just move—he can certainly answer—but let me just move to strike all hypotheticals unless there is documented evidence that this witness has personal knowledge of who worked on there [sic], what they did, and all hypotheticals I move to strike.

You clearly can try to answer.

THE WITNESS: Could you please repeat the question?

MR. HANNY: Actually I think I could probably help Mr. Sewall a little bit.

BY MR. HANNY: (resumed)

Q I would like to show you a document, sir, which has been marked as Plaintiff's Exhibit No. 2 for purposes of [22] Bob Thompson's deposition. I refer you to page 11. I would like you to look at that, sir, and towards the bottom two-thirds of the page there is the name Ball-Healy-Granite; do you see that?

A Yes, I do.

Q Underneath that are several names—I think 15 or whatever—of companies; do you see that?

A This is correct.

Q Do you see the name "Tunnel Electric" typed in there?

A Yes, I do.

Q There are other outfits

A There are other firms named there.

Q Is it your understanding that Ball-Healy-Granite was the prime contractor on A-6b, and that the names under that, including Tunnel Electric, were subcontractors?

MR. COHEN: Let me object to the form of the question. You certainly have a right to ask the witness what was Ball-Healy and Granite and what are the other names, but to suggest to him that Ball-Healy and Granite was a prime and these were subs, I can conceivably sug-

gest to him that he has no personal knowledge of who was on the project, and he [23] doesn't know if any of those people were on the project.

Clearly I could also inform him that Mr. Thompson has testified that to National Loss Control, that that list just means a certificate of insurance was issued. He doesn't know who was on the project.

So in fairness to this witness, you have to ask him straight out and not lead him. This is your witness. This is your direct examination.

BY MR. HANNY: (resumed)

Q You can answer the question, Mr. Sewall.

A Could you please repeat the question?

Q Let me just preface repeating the question with another question. Have you ever been at the A-6b project when it was under excavation by Ball-Healy-Granite?

A I may have and I may not have. I can't recall.

Q In reference to Plaintiff's Exhibition No. 2, I believe, for purposes of Thompson's deposition, referring to page 11, I believe—

A Page 13.

Q Page 13, you see the name Ball-Healy-Granite?

A Yes, I do.

Q Is it your understanding that Ball-Healy-Granite [24] was a prime contractor on the A-6b project?

A It is my understanding that Ball-Healy-Granite was the prime contractor on this particular contract.

Q Do the names under that, Mr. Sewall, which includes Tunnel Electric—and there are several other names—do you have any personal knowledge as to what functions any of those companies performed?

A No.

Q Are you familiar with or do you know from personal knowledge by whom Stanley Wilmes worked?

A The only personal knowledge that I have would be from looking at his file, and I don't have his file with me right now, so, therefore, I can't really tell you.

Q Is it your understanding, sir, that Mr. Wilmes worked for Ball-Healy-Granite as a hard wreck miner?

A I can't tell you. As I said, we have numerous files in the office.

Q You didn't have an opportunity to review Stanley Wilmes' compensation file to determine who his employer was?

A I may have at one time, but there were 3 or 4 thousand, 5 thousand, files in the office. I can't recall off the top of my head right now who his employer was.

[25] Q Assuming for purposes of the deposition that Stanley Wilmes worked for Ball-Healy and Granite, who would he be working for in terms of the classification of Ball-Healy and Granite?

A He would be working for the prime contractor.

MR. COHEN: Just a minute, Mr. Leyden. An assumption where the witness says he doesn't know, because the witness has called this prime contractor in his deposition a subcontractor, so it seems to me that there is an air of confusion about this.

So for you to say "assuming," when he says he doesn't know who he worked for, et cetera, is what I object to.

I also want to say in fairness to the witness, he is here to be questioned about his affidavit, and this deposition has gone very, very far afield, and it was represented to the Court that these people were being brought in on the coordinated insurance program, which I haven't heard any questions about yet.

With those comments you can certainly keep inquiring. You will probably have to repeat the question.

MR. HANNY: For purposes of clarity, I am questioning Mr. Sewall about his affidavit dated August 20, 1982.

[26] BY MR. HANNY: (resumed)

Q Mr. Sewall, assuming that Mr. Wilmes worked for Ball-Healy and Granite, would he be working for a prime contractor or a subcontractor, in your opinion?



A In my opinion he would be working for the prime contractor of Section 1A0062 or A-6b. Again, this is—they were a subcontractor of the Authority in this particular section; so whether you want to say that is working for a subcontractor, or prime contractor, or a sub subcontractor, or whatever, you are the legal person. I am just calling them as I see them out here.

Q But it is your opinion that if he worked for Ball-Healy-Granite, he would be working for the prime contractor on the excavation site known as A-6b?

MR. COHEN: He also testified—in fairness to this witness in his answer—that he calls that prime contractor, the subcontractor of the Authority. So he uses two definitions.

THE WITNESS: I would have to say yes, because his location code shows 12101000, and 000 would indicate that that was a prime contractor.

\* \* \* \*

[27] Q Mr. Sewall, are you familiar with the CIP program, coordinated insurance program, known as wrap-up?

A Insofar as I handle claims under the CIP program.

Q Who administers the wrap-up program on WMATA?

A What do you mean by "administers"?

Q Well, there is a term known as MIA or Metro Insurance Associates; are you familiar with that term?

A Yes.

Q They are not affiliated or they are not employees of Metro; is that correct?

A I can't answer that of my own knowledge. Well, maybe I can. I think they are employees of Johnson and Higgins.

Q Which is a brokerage firm out of New York City; [28] is that correct?

A I have no idea where they are out of.

Q The wrap-up or CIP insurance program was initiated around October 1971; is that your understanding?

A This is the date that is used on the policy, as I recall.

Q Prior to that date when wrap-up was initiated on the Metro project, is it your understanding that the contractors who were selected to build Phase I provided their own workers' compensation and liability coverage?

A I have no idea on that. I came here in 1975. Just what transpired prior to 1975 I have absolutely no idea.

Q You don't have any understanding as to what the insurance arrangement was prior to the coordinated insurance program?

A I believe some of the companies may have carried their own insurance. I am not at all completely familiar.

. . . . .

[30] Q Would you agree that a wrap-up program administratively is to the benefit of Metro?

A I think administratively it is more to the benefit of the general public rather than to Metro.

Q Well, the question is: Does it benefit Metro administratively by having one insurance company and one adjusting arm of that company cover and administer claims?

A Probably.

. . . . .

[31] Q I am almost through, Mr. Sewall. Let me ask you this: What is your reason or why do you classify a company such as Ball-Healy-Granite as a prime contractor vis-a-vis a general contractor?

A Because there are numbers, the first numbers under that particular contract.

Q I mean other than the numbers.

Well, is that what you are basing your testimony on, the numbers that precede—

A Well, this is what I would have to if I were to take a look at this listing here. This is what I would ask for, because you have here a number of different pages.

We have, I would say, if I take a look at this, a [32] thousand and some odd contractors, and the only way that I can tell which is the prime contractor, what I would

consider a prime contractor, would be to take a look at the numbers.

Q Let me come over and join you, because I want to ask you a couple of questions about the numbers. This is in reference to Plaintiff's Exhibit No. 1 for purposes of Mr. Thompson's deposition.

On the left-hand side there are a series of numbers. Let's take Ball-Healy-Granite, and there is the number 12101000.

Would you tell me what that number means?

A That number means that this is a location code indicating that this is the first contract let under this particular project, 1A0062; or as you referred to it earlier, as A-6b.

Q So that just tell [sic] us that that's the first contract that was let?

A Under that particular project, yes, sir.

Q By Metro to Ball-Healy-Granite, joint venture?

A I can't say that would be the first contract let to Ball-Healy-Granite, joint venture. They may have had other contracts.

[33] Q In terms of the A-6b project?

A In terms of A-6b project, yes.

Q That was the first A-6b contract entered into between WMATA and a company to excavate the A-6b project?

A If that's what they were hired to do, yes.

Q The next one, the next company is District Utilities, code number to the left is 12101001.

MR. COHEN: Excuse me a minute, Jim, and I will let you go right down the list. Let me make a continuing objection and continuing motion to strike this witness's testimony because it is not based upon personal knowledge of when the contract was executed, but is based upon numbers that I don't think a predicate has even been laid that he prepared these numbers.

Therefore, he is testifying in a guesstimate fashion based upon numbers, and I think that that is not sufficient for testimony under oath that can be used.

If you can indicate for the record that he prepared these numbers after looking at the contracts, comparing dates, seeing that this was the first contract and what it was for, I withdraw my objection.

But if he is going to continue in this fashion, [34] I would note my continuing objection and my continuing motion to strike.

With that, I say nothing else, and let you finish.

BY MR. HANNY: (resumed)

Q You may answer, sir.

A That number there would tell me that they would be the second contract that was let under that particular project.

Q The A-6b project?

A Yes.

Q Then it goes down the list?

A This is correct.

Q These numbers that I referenced to you, the numbers on the left-hand side, whose numbers are they, if you know?

A They were devised, as far as I know, by the Metro Insurance Administrators.

Q As a code reference to those contracts, those companies that were going to be covered under the wrap-up?

A This is correct.

Q Do you have any knowledge, sir, as to the general classification of the companies under Ball-Healy-Granite: District Utilities, Geo-Facts, Inc., et cetera?

[35] A You mean as to what type of work they do?

Q not what type of work they do; whether or not they are subcontractors or what?

A Well, they are all subcontractors.

Q Those are all subcontractors?

A All underneath the Washington Metropolitan Area Transit Authority.

Q That's not my question.

Subcontractors to do what?

A Specified work, I assume.

Q Those companies are speciality companies, aren't they, as opposed to general construction companies?

A I have no idea whether District Utilities is a specialty company or not. They could be a general contractor on some other project. On this particular project they may not be. When I say "another project," let's say for the Washington Sanitary Commission, they can be a general contractor. I don't know what they do.

\* \* \*

[36] Q Would it be correct, Mr. Sewall, that your knowledge or basis for your knowledge in the affidavit and in your testimony today as to what Ball-Healy is or what Tunnel Electric is, What Geo-Facts, Inc., is, is based [37] upon the code numbers that are in front of you today?

A Basically, yes. I would have to—whether it is these code numbers or any of the code numbers on any of the various pages, as I stated earlier, it would be impossible to know any one of these off the top of my head.

Q Those code numbers were set forth by MIA; is that your understanding?

A It is my understanding that Metro Insurance Administrators assigns these numbers, yes.

Q And the reason for assigning these numbers next to these companies is what?

A Is to indicate that these various companies have been issued an insurance certificate.

Q So you don't know, is it correct—and correct me if I am wrong—you don't know whether or not, based upon these numbers or from your own personal knowledge, whether or not Ball-Healy-Granite is a general contractor or a subcontractor; is that correct, sir?

A The only thing I know is that the code number given to Ball-Healy and Granite is that they are the prime contractor.

Q Because they are the first outfit that entered [38] into a contract on A-6b?

A Correct. They have the lowest number.

Q Well, let's go back a little bit here. Your definition of a prime contractor is what?

A As I stated earlier, a prime means first, and, therefore, a prime contractor would mean a first contractor.

Q But you don't have any independent knowledge, sir, other than these code numbers which are inhouse code numbers of Johnson and Higgins?

A Metro Insurance Administrators.

Q That's an arm of the brokerage firm which is Johnson and Higgins?

A This is correct.

Q Those are inhouse code numbers that are the product of Johnson and Higgins, which is an insurance brokerage company in New York City that uses a local office called MIA, Metro Insurance Administrators, not to be confused with Metro, to designate when contracts were entered into on a specific job site; is that correct?

A I don't know whether that designates what you just said. Are you trying to say that these code numbers—is it my understanding that these code numbers designate [39] when a contract was entered into?

Q The order of that company entering into a contract on A-6b, let's just talk about A-6b.

A The order, yes, not when. I would have to [sic] idea when any one of those contracts were entered into.

Q You don't have any knowledge as to whether or not Ball-Healy and Granite entered into contracts with some of the names or all of the names under it, do you?

A I have no personal knowledge of that, no.

Q So when you say that Ball-Healy-Granite is a prime contractor, that is based upon the numbers of Johnson and Higgins, because Ball-Healy-Granite is the first name that appeared there?

A This is correct.

Q And by your definition you call that a prime contractor rather than a general contractor?

A This is correct.

MR. HANNY: Excuse me a second.

(Pause.)

MR. HANNY: I have nothing else.

THE WITNESS: Thank you.

# EXAMINATION BY COUNSEL FOR THE DEFENDANT

[40] BY MR. COHEN: (resumed)

\* \* \*

[41] Q Let's try to clarify—I understand this exhibit with numbers—you used the term in paragraph 4 that in essence said that Stanley Wilmes worked for subcontractors; and I assume when you searched your files, you found that one of the subcontractors, as you called it, was Ball-Healy and Granite; is that not correct at that time?

A This is correct.

Q And the term in your method of thinking, you consider Metro or WMATA a general contractor because they have responsibility for the construction of the whole system; is that correct?

A This is what I stated originally, that they have ultimate responsibility as far as my understanding.

Q You consider everyone else Metro contracts with a subcontractors?

A This would be correct.

Q Because they don't have the responsibility for [42] the construction of the whole system; is that not correct?

A This would be correct.

Q Has anything come to your attention that has led you to believe that Ball-Healy-Granite has the responsibility for the construction of the whole systems [sic]?

A No.

\* \* \*



[43] Q You consider a company who contracts with WMATA a sub because they are under the general direction and control of WMATA; is that not correct?

A This is correct.

Q So forget these numbers for a moment. If WMATA contracted with Ball-Healy and Granite, District Utilities, Geo-Facts, Inc., Western, Inc., on down the line, you would consider each of those companies a sub of the general WMATA?

A This would be correct.

Q Because WMATA has the overall responsibility for constructing the entire system?

A This is correct.

Q It is your understanding that this system is being built by a series of contractors, and there may be subs to subs to subs, or are you aware of that?

A I am aware that it is being [sic] by a number of contracts, and that there may be subcontractors to the subs to the subs. [44] This is the reason for the CIP insurance, to make sure that everyone is insured, even the lowest of subs.

Q And the compensation insurance that we are talking about was compensation insurance purchased by Metro, the Washington Metropolitan Area Transit Authority; is that not correct?

A This is my understanding. I have seen premium checks from them in excess of a million dollars, so I guess they are the ones that are paying for it.

Q Have you ever seen a premium check from Ball-Healy and Granite?

A No.

Q When you had your conversation with Mr. Cohen and Mr. Cave on that day, and I am dealing with our conversation with you, Mr. Sewall, were you in essence told to tell the truth?

A That's what I was told.

Q Is that what you have done here today?

A This is what I have done.

Q Did Mr. Cohen and Mr. Cave or anyone associated with Metro or Hogan and Hartson tell you how to define general contractor?

[45] A No.

Q Did they tell you how to define subcontractor?

A No. If they did, I would use my own definition.

Q And the definitions you are giving here today and the definitions in your affidavit are to the effect that Metro is the general contractor because they have to construct the whole system; and when the contract with someone to do a portion of work on it, they are a subcontractor?

A This would be my definition, yes.

Q And the only reason you are using the term "prime" contractor this afternoon is because Mr. Hanny gave you something marked Plaintiff's Exhibit No. 2, which had a series of numbers on the left, and the first number listed was Ball-Healy and Granite; is that correct?

A This would be basically correct, yes.

Q So, therefore, if Tunnel Electric was listed number one, and Ball-Healy was down where Tunnel Electric was, you would call Tunnel Electric the prime?

A This would be correct.

Q If something called Peter Bratti, which is listed at the bottom of page 13, instead was listed up where Ball-Healy and Granite was, you would call Peter Bratti the prime [46] contractor; is that not correct?

A This would be correct.

Q But when you are talking about overall supervision and control, then in your opinion you are talking about the general contractor?

A This would be correct. I am talking about somebody who has the control to shut the job down or what-have-you. They are the ones who are ultimately responsible for the entire job.

Q And you consider that the general contractor has to be responsible for the entire job from the beginning to the end?

A This is my understanding of a general contractor, yes.

Q And the contract that Ball-Healy and Granite had that was let by Metro dealt with one site in turn on the whole system; is that not correct?

A This is correct.

Q Well, it really dealt with three sites, as I understand it, but it did not deal with the whole system?

A No. It dealt with one small segment called the A-6b contract. I believe it was three stations altogether.

\* \* \* \*

[47] FURTHER EXAMINATION BY  
COUNSEL FOR THE PLAINTIFF

BY MR. HANNY:

\* \* \* \*

Q I think you have answered it.

Are you of the opinion, sir, that a prime contractor [48] is different from a general contractor?

A I think you asked that earlier, and I would have to say yes, I think they are. In essence they would be different. They may have more responsibility or less responsibility than a general contractor or more responsibility, depending upon where you are putting it and what you are calling what.

Q Are you of the opinion, sir, that a prime contractor is different from a subcontractor?

A What do you mean exactly? According to what I stated earlier, the prime contractor on any particular project is in my understanding the first contract that was let on that particular project.

In other words, the prime contract for the A-6b project was Ball-Healy and Granite, the joint venture. Are you saying are they different than any of the other subcontractors?

Q My question is: Do you think that there is a difference between a prime contractor and a subcontractor?

MR. COHEN: I am going to object unless you put it—

THE WITNESS: Well, I just asked, are you asking me whether there is any difference between them and any other [49] subcontractor? I guess my answer then would probably be they may have a little bit more responsibility in one essence, but depending upon what their contract was. I have no idea of the wording of their contract.

BY MR. HANNY: (resumed)

Q But is it your general understanding—since you signed the affidavit—that a prime contractor is different than a subcontractor?

A I think I answered that, Mr. Hanny. I said they are—I believe I stated that they are really no different than any other really [sic] subcontractor. They are a subcontractor to the Authority to build the entire subway system, their particular segment of it. They may have a little bit more responsibility. I don't know how else you want me to tell you that.

Q Mr. Sewall, can there be, to your knowledge, a general contractor on a specific project which is part of an overall project? In other words, let me give you an example. Let's say that an entity, any entity, governmental entity, quasi governmental entity, or a large corporation, wanted to build a very, very large project, the TVA project, anything large, is it your understanding that there would be [50] several general contractors that would be utilized to build such a massive project?

MR. COHEN: Let me just object to that hypothetical, because there has been no predicate laid that this man is familiar with other massive construction projects. He has given his definition of why he used the term subcontractor in his affidavit.

To ask him a hypothetical about projects that don't even exist, I think is unfair to this witness unless you

can qualify him as an expert in the construction industry, which I don't think he testified.

He is basically a claims manager in Fairfax, Virginia, for NATLSCO. The court order was not to ask him hypotheticals about various hypothetical situations.

With that said, you can certainly question him.

THE WITNESS: Would you repeat the question?

BY MR. HANNY: (resumed)

Q In a very large project—let's be even more specific, let's talk about the Metro rapid rail project here in Washington, could there be several general contractors hired to build a system as large and as complex as the one here?

MR. COHEN: Let me—just a minute, sir. Let [51] me just object. He has already answered that question. He said if the general contractor has responsibility for building a system from beginning to end, they are the general contractor. Therefore, if there is a fact that there is more than one person or entity that should build that system from beginning to end, we will stipulate that there are [sic] more than one general contractor, but there isn't.

I think he has answered it but go ahead.

THE WITNESS: As I was about to say, there can be a number of contractors hired as they are hired. The sheet here, I suppose, has over a thousand different contractors listed on it to aid in building the subway system. If you want to call them all general contractors, go ahead. I call them all subcontractors.

BY MR. HANNY: (resumed)

Q Under your definition could there be numerous prime contractors to build a WMATA rapid rail system?

MR. COHEN: Let me object on the grounds that his definition of prime is listed on that list No. 1, and obviously I think that we are really wasting the Court's time, because that is a list of numbers, not a definition.

MR. HANNY: That's precisely my point. That they [52] are not the classification.

THE WITNESS: I look at 11901000, Williams Enterprises, Inc., they are a prime contractor.

I look at 12001000, CDPC Construction Company, they are a prime contractor, according to this list. I look at 13001000, Otis Elevator Company, they are a prime contractor.

I look at 13401000, Truland Corporation, they are a prime contractor. Yes, there can be a number of prime contractors on a project.

BY MR. HANNY: (resumed)

Q And you distinguished a prime contractor from a general contractor?

A The prime contractor is the first contractor issued a contract on any specific segment of the project.

Q Under the wrap-up insurance program that came into existence in October 1971, which still exists today, could a company such as Ball-Healy-Granite purchase their own insurance and not come under the umbrella of wrap-up insurance if they wanted to?

A They could.

\* \* \* \*

[54] FURTHER EXAMINATION BY  
COUNSEL FOR THE DEFENDANT

BY MR. COHEN:

Q Mr. Sewall, you have not read the contract between Ball-Healy and Granite and WMATA; is that not correct?

[55] A This is correct. I have not read it.

Q Therefore, you don't know actually what Ball-Healy and Granite could do on that project in relation to what they have contracted with WMATA; is that not correct?

A This is correct.

Q When you responded to Mr. Hanny's question about, sure, they could shut down their own project, you were

basically guessing, because you don't know what they can or cannot do under the contract; isn't that correct?

A I would have to say yes, I was guessing. As any individual would have responsibility over their own employees, they could definitely shut down the job if there is safety violations involved.

Q But if Metro had the right to shut down the job, would you consider Metro, if they shut down the job even though Ball-Healy and Granite wouldn't want it shut down, would then Metro have more control over the job site than Ball-Healy and Granite?

A I would consider that Metro would then be in a superior position.

MR. COHEN: I have no further questions.

\* \* \* \*

[57] CERTIFICATE OF THE DEPONENT

I have read the foregoing pages 3 through 56, inclusive, and find the answers to the questions therein contained to be true and correct, with the exception of changes, if any.

\_\_\_\_\_  
DAVID L. SEWALL

Dated: \_\_\_\_\_

\_\_\_\_\_  
CERTIFICATE OF NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME this

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Name)

Notary Public in and for  
the District of Columbia

My Commission Expires:



## [58] CERTIFICATE OF NOTARY PUBLIC

I, NORMA NASUTI COSTELLO, a Notary Public in and for the District of Columbia, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in Shorthand at the time and place mentioned in the caption hereof and thereafter reduced to typewriting under my supervision; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/ Norma Nasuti Costello  
NORMA NASUTI COSTELLO  
Notary Public in and for  
the District of Columbia

My commission expires:

August 14, 1984

SUPREME COURT OF THE UNITED STATES

No. 83-747

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
*Petitioner,*

v.

PAUL D. JOHNSON, *et al.*

ORDER ALLOWING CERTIORARI

Filed January 16, 1984

The petition herein for a writ of certiorari to the  
*United States Court of Appeals for the District of Colum-  
bia Circuit* is granted.

A true copy

ALEXANDER L. STEVAS

Test:

Clerk of the Supreme Court  
of the United States

By /s/ Christopher W. Vasil  
Deputy